Supreme Court, U. S.
FILED
FEB 26 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1976

No. 75-1223

C. BURGLIN and WILLIAM D. SEXTON,
Petitioners,
v.
ELLIOT L. RICHARDSON as the Secretary
Of Interior of the United States, et al.,
Respondents.

C. BURGLIN and R. C. BAILEY,
Petitioners,
v.
THE UNITED STATES OF AMERICA, et al.,
Respondents.

C. BURGLIN and HELEN BAILEY,
Petitioners,
v.
THE UNITED STATES OF AMERICA, et al.,
Respondents.

C. BURGLIN, EARNEST G. CARTER,
DORA A. CARTER and MICHAEL F. SCANLAN,
Petitioners,
v.
THE UNITED STATES OF AMERICA, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Of Counsel:
Richard C. Reed
Stephen C. Ellis
REED, MCCLURE, MOCERI & THONN, P.S.
1701 Bank of California Center
900 Fourth Avenue
Seattle, Washington 98164
Telephone: (206) 292-4900

WILLIAM ROBERT HICKMAN
Counsel for Petitioners

CRAFTSMAN & MET PRESS SEATTLE, WASHINGTON

SUBJECT INDEX

Page

Opinions Below 2

Jurisdiction 2

Questions Presented 2

Statute, Rule and Regulations Involved 4

Statement of the Case 6

Nature of the Case 6

Resume of the Pleadings and Proceedings 6

Reasons for Granting the Writ 12

I. 5 USC §706 Mandates a Review of the Administrative Record 15

II. If the Secretary Had Followed the Mandatory Language of Rule 56(e) He Would Have Proven Petitioners' Case On Conspiracy 15

III. The Secretary's Prior Decisions and Regulations Establish As A Matter of Law His Arbitrary and Capricious Conduct In This Matter 17

Conclusion 24

Appendices:

Appendix A—Opinions of the Department of the Interior A-1

Appendix B—District Court Opinion A-26

Appendix C—Order Denying Petition For Rehearing A-31

Appendix D—Court of Appeals Opinion A-32

Appendix E—Petition For Rehearing A-38

TABLES OF AUTHORITY

Table of Cases

	Page
Allstate Finance Corp. v. Zimmerman, 296 F.2d 797 (5th Cir. 1961)	17
Earnest & Dora A. Carter, 12 IBLA 181 (1973)	6
Helen S. Bailey, 8 IBLA 145 (1972)	6
Mary Adele Monson, 71 I.D. 269 (1964)	13, 20, 22
Mary I. Arata, 78 I.D. 397 (1971)	13, 20, 21, 23, 24
R. C. Bailey, 7 IBLA 266 (1972)	6, 19-20, 22
United States v. Dibble, 429 F.2d 598 (9th Cir. 1970)	16
Walling v. Fairmont Creamery Co., 139 F.2d 318 (8th Cir. 1943)	17
Washington v. Maricopa County, 143 F.2d 871 (9th Cir. 1944)	16
Washington Post Co. v. Keogh, 365 F.2d 965 (D.C. Cir. 1966)	17
Welcher v. United States, 14 F.R.D. 325 (E.D. Ark. 1953)	16
William D. Sexton, 9 IBLA 316 (1973)	6, 18-19

Statutes

5 USC §§701-706	7
5 USC §706	3, 4, 10, 11, 14, 15
26 USC §1331	7
26 USC §1361	7
26 USC §1391	7
26 USC §2201	7
26 USC §2202	7
28 USC §1254(1)	2

	Page
30 USC § 181 *et seq*	18
30 USC §226	6, 22-23
30 USC §226-2	7
30 USC §226(c)	7, 18
43 USC §1601	7

Other Authority

43 CFR §1810.1(g)	5, 20, 22, 23
43 CFR §3111.1-1(a)	5-6, 22, 24
CR 56	15
CR 56(e)	14, 15, 17
Fed. R. Civ. P. 56(e)	3, 4-5, 11
Public Land Order 4582	7, 8, 9
Public Land Order 5179	7

IN THE

Supreme Court of the United States

October Term, 1976
No.....

C. BURGLIN and WILLIAM D. SEXTON,
Petitioners,
v.
ELLIOT L. RICHARDSON as the Secretary
Of Interior of the United States, et al.,
Respondents.

C. BURGLIN and R. C. BAILEY,
Petitioners,
v.
THE UNITED STATES OF AMERICA, et al.,
Respondents.

C. BURGLIN and HELEN BAILEY,
Petitioners,
v.
THE UNITED STATES OF AMERICA, et al.,
Respondents.

C. BURGLIN, EARNEST G. CARTER,
DORA A. CARTER and MICHAEL F. SCANLAN,
Petitioners,
v.
THE UNITED STATES OF AMERICA, et al.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

The Petitioners respectfully pray that this Court exercise its sound judicial discretion by ordering the issuance of a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this case on December 19, 1975, affirming the judgment of the United States District Court for the District of Alaska entered August 7, 1974.

OPINIONS BELOW

The opinion of the Court of Appeals is not yet officially reported. It is set forth in Appendix D. The opinion of the District Court is not officially reported. That opinion is set forth in Appendix B. The Order Denying Petitioner's Petition For Rehearing is set out in Appendix C. The Department of Interior Opinions are set out in Appendix A.

JURISDICTION

As to jurisdiction, the following is shown:

(1) The opinion of the Court of Appeals was entered December 19, 1975;

(2) Petitioner's Petition For Rehearing was denied on January 27, 1976;

(3) An order staying the issuance of mandate pending petition for writ of certiorari was entered February 2, 1976;

(4) This court has jurisdiction to review the judgment of the Court of Appeals by Writ of Certiorari pursuant to 28 USC §1254(1).

QUESTIONS PRESENTED

The issue which this case presents is whether the Secretary of the Interior and other government defendants are engaged in a conspiracy to create a shortage of oil and gas in the United States by preventing the leasing and developing of oil and gas deposits in Alaska.

While this case presents the foregoing issue, this application presents the question whether the statutes and rules governing actions in Federal Courts will be distorted both in letter and in spirit so as to afford additional protection to the alliance of the Oil Cartel and the federal administration.

A. Specifically, in an appeal to the District Court from an adverse agency determination, can the issues of conspiracy, unconstitutional public land order, action contrary to law, arbitrary and capricious conduct, and abuse of discretion be summarily determined without a review of any of the record where 5 USC §706 provides that "the Court shall review the whole record or those parts of it cited by a party"?

B. Also, on a motion for summary judgment, has there been any compliance with Fed. R. Civ. P. 56(e) which provides that affidavits be based on personal knowledge, set forth facts as would be admissible, show that the affiant is competent to testify, and have attached thereto certified copies of all papers referred to, by an affidavit of an attorney for the moving party which (1) recites that he reviewed the administrative records and finds the facts in the moving party's memorandum for summary judgment are "reflected by" the administrative records, and (2) does not have attached thereto a single item (certified or non-certified) from the administrative record?

C. Has the Secretary of Interior exceeded his authority and his regulations by requiring in this case "more than a legally binding signature" on an oil and gas lease application?

STATUTE, RULE AND REGULATIONS INVOLVED

5 USC §706:

"Scope of review

"To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

"(1) compel agency action lawfully withheld or unreasonably delayed; and

"(2) hold unlawful and set aside agency action, findings and conclusions found to be—

"(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

"(B) contrary to constitutional right, power, privilege, or immunity;

"(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

"(D) without observance of procedure required by law;

"(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

"(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

"In making the foregoing determinations, the Court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error. Pub.L. 89-554, Sept. 6, 1966, 80 Stat. 393."

Fed. R. Civ. P. 56(e):

"(e) *Form of Affidavits: Further Testimony: De-*

fense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

43 CFR §1810.1(g):

"'Signature' or 'subscription' includes a mark when the person making the same intended it as such. . . ."

43 CFR 3111.1-1(a):

"(a) Application — (1) *Forms.* Except as provided in subpart 3112, to obtain a noncompetitive lease, an offer to accept such lease must be made on a form approved by the Director, 'Offer to lease and lease for oil and gas,' or on unofficial copies of that form in current use: *Provided,* That the copies are exact reproductions of one page of both sides of the official approved one page form and are without additions, omissions or other changes or advertising. The official form or a valid reproduction of the official form will also constitute the lease when signed by the Authorizing officer of the Proper Office. Each offer must be filled in by typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney-in-fact or agent. Five copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the proper office (see §3000.5 of this chapter). For the purpose of

this part an offer will be considered filed when it is received in the proper office during business hours."

STATEMENT OF THE CASE

Nature of the Case

The Petitioners herein were the plaintiffs in four district court actions below. Therein they did seek judicial review of the actions of the government defendants relative to the rejection by these defendants of 23 offers to lease oil and gas lands filed in 1968 by the Petitioners. The District Court refused to review the actions, notwithstanding the presence of questions of conspiracy, and the constitutionality, and abuse of discretion. The Court of Appeals refused to address these questions.

Resume of Pleadings and Proceedings

During the latter half of 1968 four small groups of individual plaintiffs (plaintiff-petitioner Burglin being a member of each group) made several offers for oil and gas leases in the state of Alaska. Each of the offers, made pursuant to §17 of the Mineral Leasing Act, as amended, 30 USC §226, was rejected by the Bureau of Land Management on the ground that one of the lease offerors (Burglin in each case) could not be identified on the offer form due to an illegible signature. Each of the rejections was appealed to the Interior Board of Land Appeals, which affirmed in each case. *R. C. Bailey,* 7 IBLA 266 (1972); *Helen S. Bailey,* 8 IBLA 145 (1972); *William D. Sexton,* 9 IBLA 316 (1973); *Earnest and Dora A. Carter,* 12 IBLA 181 (1973). (These opinions are set forth in Appendix A.)

Although the alleged signature defects were cured subsequent to the date of original filing, in the interim the

lands had been withdrawn from oil and gas entry under Public Land Order 4582 (January 17, 1969). The lands have remained withdrawn under the Alaska Native Claims Settlement Act, 43 USC §1601 (December 18, 1971), and Public Land Order 5179 (March 9, 1972). Since the land was withdrawn prior to the date on which plaintiffs' cured offers became effective, the Bureau of Land Management again rejected plaintiffs' offers and the Board affirmed. The plaintiffs then sought judicial review.

The first action (Burglin/Sexton) was filed April 10, 1973 in the District Court of Alaska. The second (Burglin/R. C. Bailey) was filed June 25, 1973. The third (Burglin/Helen S. Bailey) was filed August 13, 1973. The fourth (Burglin/Carter) was filed October 1, 1973. The basis for jurisdiction was set out as: 5 USC §§701-706; 26 USC §§1331, 1361, 1391, 2201 and 2202; 30 USC §226-2.

The complaints by the Petitioners and the answers by the federal defendants placed in issue the following: whether the plaintiffs' offers to lease complied with all the requirements of the 1920 Mineral Leasing Act; whether the plaintiffs' lease offers applied to land that was then available for leasing for oil and gas mining purposes under the 1920 Mineral Leasing Act; whether all requirements necessary to the issuance of each lease were complied with by plaintiffs; whether the rejection of the lease offers amounted to abuse of discretion under the 1920 Mineral Leasing Act; whether the rejection of the lease offers amounted to an abuse of ministerial duties by the government defendants under the Regulations and Public Land Orders for the following reasons:

(1) Because 30 U.S.C.A. §226(c) required defendants

to issue oil and gas mining leases for each lease offer;

(2) Because defendants Gibbons and Hagans and other employees of the Anchorage Land Office actually knew at the time of filing and have known since that time that the signature on said lease offers that are claimed illegible were the signature of plaintiff C. Burglin;

(3) Because defendants Gibbons and Hagans could have by the exercise of ordinary diligence and intelligence ascertained the name of the person who signed the lease offers;

(4) Because the leases should have been issued to plaintiff Sexton if the signature of plaintiff Burglin was illegible and his identity was not known;

(5) Because the defendants did accept the proffered lease offers, and did file them, and did accept and retain the filing fee and the advance rental payment, the defendants did lead plaintiffs to believe that the offers were properly executed and the defendants are now estopped from rejecting the offers on the grounds of improper execution;

(6) Because the defendants' long delay in acting on the lease offers constituted an abuse of ministerial duties and discretion;

(7) Because the attempted withdrawal of said land, and other land that was believed to contain oil and gas in paying quantities, under Public Land Order 4582 was arbitrary and capricious and was purposely and intentionally done for the purpose of evading and circumventing the will of the people of the United States as expressed in the 1920 Mineral Leasing Act, and that such withdrawal was for the actual purpose of preventing the leasing and development of such oil and gas land and was illegal being knowingly and purposely done at a time when there was a strong and pressing need for and a great shortage of domestically produced oil and gas;

(8) Because the attempted withdrawal of said land

under Public Land Order 4582 was contrary to the Fifth and Fourteenth Amendments of the United States Constitution and constituted taking of plaintiffs' property without due process of law;

(9) Because a plan has existed on the part of defendants which had as its principal purpose the prevention of the leasing and developing of oil and gas deposits in Alaska and the prevention of the production and transportation to market of oil and gas from Alaska; this plan is contrary to the 1920 Mineral Leasing Act, will drastically reduce the production of domestic oil and gas at a time of great need and is injurious to the plaintiffs and the people of the United States.

A year later the federal defendants filed to consolidate the four cases and for summary judgment. The motion for summary judgment was supported by a memorandum and the affidavit of James R. Mothershead which stated:

> "that he [James R. Mothershead] is the assistant regional solicitor who prepared the litigation report for the defendants in the cases of *Burglin, et al. v. Morton, et al.*, . . . ; that as a part of said duty he did review the administrative records of the lease offer cases involved therein.
>
> "that affiant has reviewed the facts, as set forth in the memorandum in support of judgment and finds the facts set forth therein to be as reflected in the official administrative records of the Department of the Interior in these cases."

Petitioner's counsel filed a memorandum which pointed out:

> "Plaintiffs have not had an opportunity to examine all of the files that are contained in the various offices of the Bureau of Land Management, the Department of the Interior of the United States and the different land offices of the Bureau of Land Management in each of the above cases. Plaintiffs have tried to arrange for depositions of certain of the defendants

> in these cases and upon the completion of this discovery will have further knowledge as to the records in each case. . . . Since the records in these cases exist at different places, Fairbanks, Alaska, Anchorage, Alaska, Washington, D.C., and the state of Virginia, and since plaintiffs have not examined the records in each said office and have not completed their discovery, plaintiffs cannot state whether or not the factual summaries as set out in the memorandum in support of the motion for summary judgment are correct or complete."

Counsel for Petitioners also pointed out that the federal defendants' motion did not take cognizance of the allegedly unlawful plan by the defendants to evade the intent and purpose of the Mineral Leasing Act. It was also noted that at issue was whether the federal defendants had acted arbitrarily in rejecting leases. In addition, the scope of review under 5 USC §706 was expressly set forth.

In addition, Petitioners' counsel also filed an affidavit wherein he noted that he had attempted to arrange for the deposition of the Secretary of Interior Rogers C. B. Morton. He had found Mr. Morton totally uncooperative in that he had refused to cooperate with any discovery. Petitioners' counsel noted that it would take an additional 90 days within which to set up the deposition of defendant Rogers C. B. Morton. Counsel further advised the Court that he would be out of the state of Alaska for 14 days and would need an additional 30 days within which to respond to the federal defendants' application for summary judgment.

On August 7, 1974, the District Court judge filed an order denying plaintiff's application for an extension of time. Also on that same date the District Court entered a

judgment dismissing all four complaints and awarding a judgment of $1,000.00 for attorneys' fees.

Petitioners took an appeal from the dismissal to the Court of Appeals for the Ninth Circuit. Therein the Petitioners did argue that the summary judgment was clearly improperly granted because of the violation of Fed. R. Civ. P. 56(e), the abuse of discretion in not allowing Petitioners further time for discovery, the failure to review the record as mandated by 5 USC §706, and the Secretary's unreasonable interpretation of regulation that "more than a legally binding signature" was required when signing an application for an oil and gas lease.

The Court of Appeals issued an opinion affirming the District Court in which it ruled that affidavits were not necessary in this summary judgment proceeding, that Petitioners would probably not have found anything if they had been given further time for discovery, that 5 USC §706 could be ignored, and that it was reasonable for the Secretary to interpret his regulations one way in one case and another way in a different case.

Petitioners filed a petition for rehearing setting out the errors of the Court (Appendix E). This petition was denied (Appendix C).

Petitioners seek nothing more from this Court than a ruling that Fed. R. Civ. P. 56(e) and 5 USC §706 mean just what they say. A reaffirmation from this Court of these very basic and simple propositions will allow the Petitioners to proceed to seek redress in the District Court for the wrongs which have been done to them.

REASONS FOR GRANTING THE WRIT

The Petitioners are little people who, back in 1968, in the best tradition of free enterprise sought to become involved in the developing oil boom in Alaska. But the Oil Cartel will tolerate no interference with its control of the oil production in the United States. Allowing people who are not members of the club to get involved in oil production could lead to loss of control over production, could lead to greater production, could lead to a drop in prices, could lead to a lessening of profits, could lead to a loss of economic and political power. No, the Oil Cartel cannot and will not tolerate anything which could lead to such results. So the Cartel called upon its silent, but effective, partner: The United States Government. Can there be any real question about the Oil Cartel? Hardly. Look at the ownership of the Prudhoe Bay oil fields. Public records show that 99% of the oil field is controlled by Standard Oil Company (Sohio), Atlantic Richfield Company and EXXON Company. Are these companies real competitors? Not likely. Public records show that each is a Rockefeller company.

Now, what are they after? Alaska has oil reserves estimated to be 10 billion barrels. The total United States oil reserve is 36 billion barrels. Of that, 22 billion barrels are found in the states of California, Louisiana, Oklahoma and Texas. Now, we know that these four states have been carefully searched from one side to the other and from top to bottom. So it is without question that the oil reserves in those states are very well established. Alaska has not been subjected to such a search yet. There is a very great probability that Alaska has even more than the estimated 10 billion barrels.

Now, who owns all that land that this oil is under. The federal government owns 95% of Alaska. And what is the federal government doing about all this oil land in light of the oil shortage? It allowed 25 wells to be drilled in Alaska. In that same period of time in California there were 868 oil wells drilled. In Kansas 628 oil wells were drilled. In Tennessee, a state better known for whiskey than for oil, they sank three times as many wells as they did in Alaska.

Why? Maybe it is because if you drill a well in Alaska you get oil—*lots of oil*. The average well in Alaska produces 1,034 barrels a day. The average United States well produces 18.4 barrels a day. Now, it would seem to an unsophisticated individual that an oil well which produces lots of oil is good. But that is not the way that the minds of the individuals involved in the Oil Cartel work. When you get lots of oil, you get a big supply of oil, and when you get a big supply of oil the price goes down. When prices go down profits go down. When profits go down power goes down. The Oil Cartel will not tolerate a reduction in either profits or power.

So when faced with the dilution of control over production, dilution of profits, dilution of power, the Cartel calls on the federal government. Strange things then begin to happen. Suddenly, the Secretary reversed his position on signatures. Whereas before a legally binding signature was all that was required (*Mary Adele Monson*, 71 I.D. 269 (1964); *Mary I. Arata*, 78 I.D. 397 (1971)), now the Secretary wanted signatures which were not merely legally binding, but a signature which was "more than a legally binding signature," i.e., a "plainly legible" signature. He wanted this despite his own regulations which define signa-

ture to include *"a mark when the person making the same intended it as" a signature.*

Then the people in the Fairbanks, Alaska, land office who had seen and processed hundreds of oil and gas lease applications signed by Cliff Burglin suddenly decided that Burglin's signature was illegible to them.

Next, the scene shifts from the Secretary's back room to the chambers of a Federal District Court Judge. Pending here is a motion for summary judgment. But this motion is not supported as required by the rules. Nor is there any attempt to comply with the statute which directs what will be considered. But these impediments, which would be quite sufficient to halt the matter in any ordinary civil case, are brushed aside in this oil case.

The last act has been played out before the Court of Appeals. Here is a Court with a 30-year history of requiring strict adherence to the rules relating to affidavits in a summary judgment proceeding. But suddenly these rules no longer seem so important, at least not in this case. Here is a Court which acknowledges that the actions of the federal government have contributed to the false oil shortage but it says it cannot review this because it lacks "judicially manageable standards," while at the same time this same Court is failing to even acknowledge the "judicially manageable standards" set forth in 5 USC §706, and circumvents the "judicially manageable standards" of CR 56(e).

Strange things indeed. However, they all have one common goal, keep the independents out of the oil business.

I. 5 USC §706 Mandates a Review of the Administrative Record

The statute provides:

> "In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party. . . ."

The moving party, the Secretary, provided no part of the record to the Court for review. The imperative "shall" indicates that the Court had no alternative but to make its determination after it had reviewed the record, either in whole or in part. In this case neither was done as no record was ever furnished to the Court for review. The statute requires a review of the record. No "record" was ever presented either to the District Court or to the Court of Appeals. There being no record upon which the "determinations" could be based, those determinations are fatally infirm.

II. If the Secretary Had Followed the Mandatory Language of Rule 56(e) He Would Have Proven Petitioners' Case On Conspiracy

The author of this petition is not a constitutional law scholar, nor is he an expert on oil and gas legislation or administrative appeals. He is a civil law lawyer in a litigation law firm. He works daily with the Rules of Civil Procedure, particularly CR 56. It is therefore the total disregard of this rule which has been the most incredible aspect of this whole proceeding.

Now, everyone knows that district courts sometimes make mistakes. That is why we have courts of appeal. So it seemed clear that in light of the Court's own history on requiring strict adherence to the rules on affidavits on

summary judgments (*Washington v. Maricopa County,* 143 F.2d 871 (9th Cir. 1944); *United States v. Dibble,* 429 F.2d 598 (9th Cir. 1970)) that a reversal was in order, or perhaps the Court would take the opportunity to deliver a stern lecture that counsel should not engage in the perversion of presenting themselves as witnesses (see *Welcher v. United States,* 14 F.R.D. 325 (E.D. Ark. 1953)). But instead of a summary reversal, or a lecture on appropriate practice, the Court atempted to gloss over this gross defect first by saying that this situation called for a procedure not provided for in the rules, then by saying the Petitioners, contention was merely "technical," notwithstanding that it was based on the Court's own decisions, and finally by saying that it did not rely on the Secretary's affidavit anyway. [If the Court did not rely on the affidavit then it must have premised its determination solely on the denials in the Secretary's answer. We are unaware of any procedure which dictates a dismissal solely because the defendant denies he did anything wrong.]

In its opinion the Court of Appeals stated:

> "The Government by affidavit could not set forth all the specific evidence needed to demonstrate the absence of the alleged conspiracy. To do so would entail the recitation of the long history of the Government's many actions affecting the petroleum resources of this nation."

Petitioners submit that if the Secretary had set forth by affidavit the long history of the Secretary's many actions affecting the petroleum resources of this nation, the Petitioners' case of conspiracy would have been conclusively proven. Moreover, and perhaps more revealing, is the fact that the Secretary's affidavit does not even deny the existence of the conspiracy between the Secretary and the Oil Cartel.

The mandatory dictates of CR 56(e) were established to ensure that due process was afforded in even the most summary disposition of a case. These procedures are an absolute minimum. To allow one party to slip out of litigation without even requiring the most minimal observance of the dictates of due process is not justice.

CR 56(e) requires that affidavits be made on personal knowledge, set forth admissible facts, show the affiant is competent, and requires certified copies of all papers referenced to be attached. Here the one single solitary affidavit submitted in support of the motion for summary judgment was not based on personal knowledge, did not set forth facts, at best it set forth hearsay, demonstrated that the affiant was not competent to testify to anything, and did not have attached thereto a single item alluded to in the affidavit.

Requiring strict adherence to the requirements of the Rule was the rule in the Ninth Circuit until this case as it was in the other circuits. *Walling v. Fairmont Creamery Co.,* 139 F.2d 318, 322 (8th Cir. 1943); *Washington Post Co. v. Keogh,* 365 F.2d 965 (D.C. Cir. 1966); *Allstate Finance Corp. v. Zimmerman,* 296 F.2d 797 (5th Cir. 1961). However, it seems oil cases produce different results.

III. The Secretary's Prior Decisions and Regulations Establish As A Matter of Law His Arbitrary and Capricious Conduct In This Matter

Burglin was an applicant for oil and gas leases on federal lands in Alaska. Application was made pursuant to the

Mineral Leasing Act of 1920 (30 USC §181 *et seq.*) and the regulations adopted pursuant thereto.

The applications in question were submitted pursuant to 30 USC §226(c), which reads as follows:

> "(c) If the lands to be leased are not within any known geological structure of a producing oil or gas field, the person first making application for the lease who is qualified to hold the lease under this chapter shall be entitled to a lease of such lands without competitive bidding. Such leases shall be conditioned upon the payment by the lessee of a royalty of 12-½ per centum in amount or value of the production removed or sold from the lease."

The lease applications here were all rejected for the same reason—*i.e.*, the asserted illegibility of the signature of Burglin. As stated by the Acting Chief Adjudicator for the Bureau of Land Management in Anchorage, Alaska, who initially raised the issue:

> "The intent of regulation 43 CFR 3111.1-1, which pertains to the preparation of oil and gas lease offers, is clear in that it calls for the form to be prepared in such a manner as to leave no doubt as to the identity of the person or persons seeking to enter into a contract with the government. Since the subject offers were obviously intended as joint ones by two persons, and since the identity of one of the offerors is not discernible from the signature, it must be considered that the offer is incomplete. [Cite ommitted]." (R.C. Bailey determination letter, January 25, 1971).

In an appeal to the Interior Board of Land Appeals, the Internal Interior Department's subagency designated to resolve these disputes by the Secretary, the Department used the following language to support the conclusion:

> "We note at the outset that the illegibility of Burglin's signature is a fact readily apparent to all who possess ocular capacities. The signature is an unseemly pastiche of curlicues and skewed lines. The derivation of "C. Burglin" from this chaos would require far more than patient inspection of the markings. Certainly it cannot be contended that this Department is obliged to hire a haruspex to decipher a lease applicant's personal code. Rather, the onus rests with the applicant to provide some means by which his identity may be determined without necessitating resort to scapulimancy or divination." *William D. Sexton*, 9 IBLA 317.

As to Burglin's signature the Board also observed:

> "Examination of the Burglin signature reveals a grotesque scribble consisting of several prominent almost-closed curves, interspaced by flat curves and terminating in a nearly-straight line. No letter of the alphabet is clearly discernible, although when given the clue that this scrawl is intended as a graphic representation of leters it offers abundant possibilities for speculation. However, even with the knowledge that the signature is supposed to read "C. Burglin." we are unable to see that it does so, even approximately. It lacks even the proper number of features to coincide with the number of letters supposedly represented. The offers provide no other identification of the signatory.
>
> "Burglin is, of course, at liberty to adopt any device he chooses to serve as his signature. He may write it in Sanskrit, Greek or Chinese. He may employ Arabic numbers, cuneiform, pictographs, or as he has apparently done, hieroglyphics of his own contrivance. That is his right, and if it is affixed to the instrument for the purpose of authenticating it with the intent that he shall be bound thereby, it will serve the legal function of a signature, at least in most jurisdictions. 43 CFR 1810.1(g); 80 C.J.S. 1284 *Signatures; See also* cases collected in 39 *Words & Phrases*, 359.
>
> "However, nowhere in law or logic is it established that a person has a right to be identified by people

> generally merely by their viewing whatever mark, symbol, sign or device he may choose to employ as representative of himself." *R. C. Bailey*, 7 IBLA 266, 267-268.

The regulation referred to in the *R.C. Bailey* decision, 43 CFR §1810.1(g), states in full as follows:

> "(g) 'Signature' or 'subscription' includes a mark when the person making the same intended it as such. . . ."

Thus, the Secretary has recognized the common law view of what constitutes a signature. This adherence to common law was recognized in *Mary Adele Monson*, 71 I.D. 269 (1964). In *Monson*, the issue was whether a lease offer was valid when the typewritten name "Mary Adele Monson" appeared and the actual signature affixed under the typewritten name was "Mary Adele Gibbs". The lease application had been rejected upon the theory that the variance in names invalidated the application since "the burden cannot be placed upon the Department to assume or determine that Mary Adele Monson and Mary Adele Gibbs are the same person." 71 I.D. at 270. The Secretary disagreed, noting first the adherence to general law on the subject of signatures. He then ruled as follows:

> "The Department's regulations provide only that the offer must be signed in ink by the offeror. In the absence of a specific regulation to the contrary, there is no basis for departing from the generally accepted standard as to what constitutes a signature. Thus, there appears to be no question as to the acceptability of Mrs. Monson's signature of either her maiden name or her married name on the lease offer if, in fact, she signs the forms as she has certified that she did." 71 I.D. at 271.

A similar ruling was made in the case of *Mary I. Arata*, 78 I.D. 397 (1971), where the applicant "signed" the application by affixing a rubber stamp of her signature. The IBLA stated, on appeal,

> "There is an abundance of legal authority discussing and interpreting the terms 'sign' and 'signature'. Many state and federal cases hold that the terms included any memorandum, mark, or sign, written or placed on any instrument or writing with intent to execute or authenticate such instrument. It may be written by hand, printed, stamped, typewritten, or engraved. It is immaterial with what kind of instrument a signature is made. *Joseph Denunzio Fruit Co. v. Crane*, 79 F. Supp. 117 (S.D. Cal. 1948), vacated on other grounds, 89 F. Supp. 962 (S.D. Cal. 1950), rev'd, 188 F.2d 569 (9th Cir., 1951), *cert. denied*, 342 U.S. 820 (1951) (contract); *Plemens v. Diddle-Glaser, Inc.*, 244 Md. 556 (224 A.2d 464 (1966) (UCC); *Blackburn v. City of Paducah*, 441 S.W.2d 395 (Ky. 1969) (resig. of City official); *Weiner v. Mullaney*, 59 Cal. App. 2d 620, 140 P.2d 704 (1943) (trust); *Bishop v. Norell*, 88 Ariz. 148, 353 P.2d 1022 (1960) (stat. of frauds). The law is well settled that a printed name upon an instrument with the intention that it should be the signature of the person is valid and has the same effect as though the name were written in the person's own handwriting. *Roberts v. Johnson*, 212 F.2d 672 (10th Cir., 1954)." 78 I.D. at 398.

It then concluded that:

> "Thus, it appears that a rubber stamp has been an acceptable form of signature and the words 'signed and fully executed' would not be disconsonant with an applicant's belief that a rubber stamp would be acceptable, provided it was the applicant's intention that the stamp be his signature. This conclusion is further fortified by the Department's own rules of construction which provide that 'signature' and 'subscription' include a mark when the person making the same intended it as such. 43 CFR 1810.1(g) (1971)." 78 I.D. at 398.

The same subagency that decided the *Arata* case has now attempted to reverse its previous position. In the

paragraphs quoted from the *R. C. Bailey* case above, the Board acknowledges that Burglin can use any device he pleases to affix his name to a lease application citing 43 CFR 1810.1(g). It then goes on to state that:

> "The Bureau must know who is applying for or asserting an interest in federal oil and gas leases in order to determine individual qualifications, to post records and to assure that the limitations on acreage are observed. It employs no cryptographers or mystics to divine the arcane meaning of cabalistic markings on lease offers." 7 IBLA at 268.

This is the same argument that the Secretary expressly rejected in the *Monson* case.

The regulations themselves are dispositive of this entire issue. 43 CFR 3111.1-1(a) establishes the requirements for the application form to be used pursuant to 30 USC §226. This section of the regulations reads, in full, as follows:

> "(a) Application — (1) *Forms.* Except as provided in subpart 3112, to obtain a noncompetitive lease, an offer to accept such lease must be made on a form approved by the Director, 'Offer to lease and lease for oil and gas,' or on unofficial copies of that form in current use: *Provided,* That the copies are exact reproductions of one page of both sides of the official approved one-page form and are without additions, omissions or other changes or advertising. The official form or a valid reproduction of the official form will also constitute the lease when signed by the Authorizing officer of the Proper Office. *Each offer must be filled in by typewriter or printed plainly in ink and signed in ink by the offeror or the offeror's duly authorized attorney-in-fact or agent.* Five copies of the official form, or valid reproduction thereof, for each offer to lease shall be filed in the proper office (see §3000.5 of this chapter). For the purpose of this part an offer will be considered filed when it is

> received in the proper office during business hours." [Emphasis supplied.]

The italicized portion of the regulation section clearly shows adherence to the rule on signatures generally prevalent in the United States and previously adhered to by the *Secretary.* The section requires the body of the application to be ". . . filled in by typewriter or printed plainly in ink. . . ." When it comes to describing what will constitute an adequate and valid application be ". . . *signed in ink by the offeror.* . . ." There is no requirement of legibility. Indeed, pursuant to 43 CFR 1810.1(g) a valid signature includes "a mark when the person making the same intended it as such."

In the *Arata, supra,* case, the IBLA stated:

> "It perhaps would be better policy to require that the signature on the drawing card be 'hand written in ink' by the offeror. However, the regulations do not so state, and we cannot add these words by implication. If the Department had intended for the card to be so signed, it should have clearly stated. As was stated in *A. M. Shaffer, et al, Betty B. Shaffer, supra, at* 301 — '. . . if it is felt that the practice followed by the appellants is objectionable, the regulation should be amended to make the offeror's obligations clear.' Therefore, because of the ambiguity of the regulations, *an interpretation favorable to the applicant is required.*" 78 I.D. at 398-399. [Emphasis supplied.]

The same principle holds true in the present instance. Pursuant to the Secretary's own regulations, Burglin had the right to write his name in "Sanskrit, Greek or Chinese . . . [or to] employ Arabic numbers, cuneiform, pictographs, or as he has apparently done, hieroglyphics of his own contrivance. . . ." If so and if the signature is in fact illegible, then it amounts to Burglin's "mark" and is ac-

ceptable under the very regulations that the Board purports to rely upon. If the Secretary wished a printed or typewritten reproduction of an applicant's signature to be placed above or below the signature line, it could have easily specified such a requirement in 43 CFR 3111.1-1(a). However, the regulation does not do this and "we cannot now add these words by implication." *Arata, supra,* at 398.

As is apparent the actions of the Secretary do not withstand review. The Secretary's claim as to illegibility of signature is revealed as the contrivance which it was.

CONCLUSION

The death penalty. Abortion. Civil rights. Criminal due process. Issues of tremendous importance in a society which tries to be both a free and open society as well as a society governed by law. Petitioners' case presents an unusual situation where both goals have been frustrated. The law has been ignored by the courts. The Secretary and the Oil Cartel have shut off free enterprise and open competition. We have moved several steps closer to the corporate state. We implore this Court to restore the balance by exercising its power of supervision to direct a return to the accepted and usual course of judicial proceedings.

DATED February 15, 1976.

Respectfully submitted,

WILLIAM ROBERT HICKMAN
Counsel for Petitioners

Of Counsel:
RICHARD C. REED
STEPHEN C. ELLIS
REED, MCCLURE, MOCERI
& THONN, P.S.

APPENDIX A

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 Wilson Boulevard
Arlington, Virginia 22203

WILLIAM D. SEXTON, ET AL.

Decided February 13, 1973

IBLA 72-332

Appeal from a decision of Alaska State Office, Bureau of Land Management, rejecting oil and gas lease offers AA-3503 to AA-3510, inclusive.

Affirmed.

Oil and Gas Leases: Lands Subject to—Withdrawals and Reservations:

Effect of

Lands withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, pursuant to the Alaska Native Claims Settlement Act are not available for leasing under the Mineral Leasing Act of 1920 and an oil and gas lease offer for such land is properly rejected although filed prior to the withdrawal.

Oil and Gas Leases: Applications: Generally—Oil and Gas Leases: Applications: Amendments—Oil and Gas Leases: First Qualified Applicant

Oil and gas lease offers are properly rejected when each offer shows on its face that there are two offerors with 20 percent and 80 percent interests respectively, but one of the offerors cannot be identified from the face of the offer form because his name is represented only by an illegible signature. An offeror whose identity cannot be established from the face of the offer cannot be regarded as the first qualified applicant considered as being cured and having priority from the time of its filing. However, the offers may be considered as being cured and having priority from

the time that a supplemental statement is submitted, signed by the offeror and the other interested party, properly identifying him.

APPEARANCES: William D. Sexton and Clifford C. Burglin, *pro se.*

OPINION BY MR. HENRIQUES

William D. Sexton and Clifford C. Burglin appeal from a decision of the Alaska State Office, Bureau of Land Management, dated April 23, 1969, rejecting oil and gas lease offers AA-3503 to AA-3510, inclusive, for lands found in T. 16 S., R. 44 W., Seward Meridian. The State Office noted that each of the lease offers, which were submitted on September 27, 1968, was signed by Sexton followed by the notation of 80 percent and by another party (eventually identified as Burglin), followed by the notation of 20 percent. This latter signature was illegible and the State Office held that the application was incomplete and must be rejected. On appeal, appellants press a number of arguments.

We note at the outset that the illegibility of Burglin's signature is a fact readily apparent to all who possess ocular capacities. The signature is an unseemly pastiche of curlicues and skewed lines. The derivation of "C. Burglin" from this chaos would require far more than patient inspection of the markings. Certainly it cannot be contended that this Department is obliged to hire a haruspex to decipher a lease applicant's personal code. Rather, the onus rests with the applicant to provide some means by which his identity may be determined without necessitating resort to scapulimancy or divination.

A number of the contentions advanced by appellant Burglin on this appeal were considered and rejected in *R. C. Bailey, et al.*, 7 IBLA 266 (1972). Additionally, the appellants here contend that they fear that approval of the State Office's rationale would open the floodgates for arbitrary rejection of lease offers in cases in which the signature is ascertainable. A major function of the law is to draw lines and place rational limitations on the sweep of general rules. While future cases may present issues less

amenable to easy resolution, the case at the bar contains no such pitfalls.

The information as to the identity of the second signatory was supplied on appeal on June 20, 1969. Under the procedures discussed in *R. C. Bailey, supra*, appellants' priority would run from that day. In the interim between the original offer and the day on which the deficiencies thereof were cured, however, Public Land Order [PLO] 4582 withdrew all unreserved public lands in Alaska from leasing under the Mineral Leasing Act. PLO 4582 was repealed on December 18, 1971, by the Alaskan Native Claims Settlement Act, 85 Stat. 688, 43 U.S.C.A. §§ 1601 *et seq*. Under § 17(d)(2)(A) of the Act, the Secretary of the Interior was directed "to withdraw from all forms of appropriation under the public land laws, including the mining and mineral leasing laws * * * up to, but not to exceed eighty million acres of unreserved public lands * * * which the Secretary deems are suitable for addition to or creation as units of the National Park, Forest, Wildlife Refuge, and Wild Scenic Rivers Systems * * *." Pursuant thereto on March 15, 1972, the Secretary of the Interior issued PLO 5179, 37 F.R. 5579, withdrawing, *inter alia*, the subject lands. Since the lands applied for are now withdrawn from oil and gas leasing, appellants' offers must be rejected. Where public land has been withdrawn from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, it is proper to reject an application for an oil and gas lease even though the land was withdrawn after the application was filed. *James D. Johnson, et al.*, 8 IBLA 348 (1972). Thus, the lease offer of the appellant must be rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

/s/ Douglas E. Henriques, Member

We concur:
/s/ Joseph W. Goss, Member
/s/ Martin Ritvo, Member

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
State Office
555 Cordova Street
Anchorage, Alaska 99501

Feb. 25, 1972

Certified Mail
Return Receipt Requested

DECISION

William D. Sexton *et al.* — AA-3503, etc.
315 Illinois Street — Oil and Gas
Fairbanks, Alaska 99701

Offers Rejected

The above-identified oil and gas lease offers, filed September 27, 1968, were made in the name of William D. Sexton *et al.*, and they were signed by William D. Sexton *et al.*, and one other person who was shown as an offeror with 20% interest but whose signature was illegible. The identity of the co-offeror was not divulged by the signature nor was it otherwise revealed. The offers were therefore incomplete when filed.

On August 6, 1969, a statement identifying Clifford C. Burglin as the co-offeror was filed in an attempt to validate the offers. However, at the time this statement was filed, Public Land Order 4582, dated January 17, 1969, had withdrawn all unreserved public lands in Alaska from all forms of appropriation or disposition under the public land laws, including the mineral leasing laws. The lands here concerned were unreserved public lands on January 17, 1969 and were, therefore, withdrawn under the provisions of Public Land Order 4582 prior to the filing of the statement completing the offers.

Thus, the offers, as originally filed, were fatally defective and at the time the offers were completed, the lands had been withdrawn by Public Land Order 4582. Accordingly, the offers are hereby rejected. See *Mary Adele Monson*, 71 I.D. 269 (1964).

The right of appeal to the Board of Land Appeals, Office

of Hearings and Appeals, is allowed in accordance with the regulations in 43 CFR 4.400. See enclosed form. However, if an appeal is to be taken, the notice of appeal must be filed in the Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501, within 30 days from receipt hereof. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations.

/s/ Julienne M. Gibbons
Acting Chief Adjudicator

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 Wilson Boulevard
Arlington, Virginia 22203

R. C. BAILEY, *ET AL.*

IBLA 71-206 — Decided September 19, 1972

Appeal from the decision of the Alaska state office rejecting oil and gas lease offers F-5410 through F-5421.

Affirmed in part, set aside in part and remanded.

Oil and Gas Leases: Applications: Generally — Oil and Gas Leases: First Qualified Applicant

Oil and gas lease offers are properly rejected when each offer shows on its face that there are two offerors with 20 percent and 80 percent interests respectively, but one of the offerors cannot be identified from the face of the offer form because his name is represented only by an illegible signature. An offeror whose identity cannot be established from the face of the offer cannot be regarded as the first qualified applicant for a lease, and such an offer earns no priority from the time of its filing. However, the offer(s) may be considered as being cured and having priority from the time that a supplemental statement is submitted, signed by the offeror and the other interested party, properly identifying him.

APPEARANCES: Edgar Paul Boyko, Esq., for the appellant.

OPINION BY MR. STEUBING

Helen S. Bailey has appealed from the decision dated January 25, 1971, whereby oil and gas lease offers F-5410 through F-5421 were rejected by the Alaska state office. Either through oversight or deliberation the appeal does not include offer F-5410. To compound the confusion, Helen S. Bailey is without standing to appeal, being a stranger to the record in each of these cases, and the assertion in the statement of reasons for appeal that she was a signatory of the lease offers involved is patently incorrect. The offers were filed and signed by "Mr. R. C. Bailey," and another. This affords a proper basis for dismissal of the appeal.

However, it is apparent that the error was made by the attorney who represents the Baileys in these matters. Two or more groups of offers were rejected under similar circumstances. One or more of these groups involve offers in which Mr. R. C. Bailey was involved as an offeror and in one or more groups Helen S. Bailey was an offeror. These different groups of offers were rejected by separate decisions. However, in filing appeals from these decisions the lawyer representing the Baileys failed to make the proper distinction, and lumped all of the offers in a single statement of reasons in the name of Helen S. Bailey. In light of our recognition of the nature of the procedural error, we will consider the matter on its merits as the appeal of R. C. Bailey.

In its decision, the Alaska state office made the following observation:

> ° ° ° The offers were signed by the same person in whose name the offer was prepared, R. C. Bailey. There was a second signature on the forms which is not legible. The offer shows no other evidence that the second individual is a party to the offer except for the notation of "20%" and "80%" by each signature.

When the appeal from this decision was taken it was

disclosed for the first time that the "second person" in each instance was C. Burglin, P. O. Box 131, Fairbanks, Alaska. In an affidavit which accompanied appellant's statement of reasons for appeal, copies of which were provided for each of the subject lease offers, Burglin identified himself as a lease broker who has been in business in Fairbanks for many years, and he states that his signature is well known in Fairbanks, is honored by banks, and has been recognized by the Bureau of Land Management which has previously issued leases signed by him in the same manner. Appellant further argues that many of the signatures of Bureau employees are also illegible, a recrimination which we will not entertain.

Examination of the Burglin signature reveals a grotesque scribble consisting of several prominent almost-closed curves, interspaced by flat curves and terminating in a nearly straight line. No letter of the alphabet is clearly discernible, although when given the clue that this scrawl is intended as a graphic representation of letters it offers abundant possibilities for speculation. However, even with the knowledge that the signature is supposed to read "C. Burglin," we are unable to see that it does so, even approximately. It lacks even the proper number of features to coincide with the number of letters supposedly represented. The offers provide no other identification of the signatory.

Burglin is, of course, at liberty to adopt any device he chooses to serve as his signature. He may write it in Sanskrit, Greek or Chinese. He may employ arabic numbers, cuneiform, pictographs, or as he has apparently done, hieroglyphics of his own contrivance. That is his right, and it is affixed to the instrument for the purpose of authenticating it with the intent that he shall be bound thereby, it will serve the legal function of a signature, at least in most jurisdictions. 43 CFR 1810.1(g); 80 CJS 1284 *Signatures; see also* cases collected in 39 *Words and Phrases* 359.

However, nowhere in law or logic is it established that a person has a right to be identified by people generally merely by their viewing whatever mark, symbol, sign or

device he may choose to employ as representative of himself.

The Bureau must know who is applying for or asserting an interest in federal oil and gas leases in order to determine individual qualifications, to post records and to assure that the limitations on acreage are observed. It employs no cryptographers or mystics to divine the arcane meaning of cabalistic markings on lease offers.

Appellant argues that "valuable priority rights should not be forfeited over trifling technicalities such as these ° ° °," and he asserts that, "these offers are no more incomplete than if someone had forgotten to cross a 't' or dot an 'i'."

We disagree. If it is beyond the normal ability of a literate person to ascertain the identity of a party to a lease offer, the fault lies in the offer and is attributable to those who prepared and submitted it, and they may not shift that fault to the Bureau because its employees are unable to decipher an incomprehensible scrawl. Since the identity of one of the parties in interest was not provided in any meaningful way on the face of the offers, the offers are incomplete and therefore deficient. An offeror who cannot be identified cannot be regarded as the first qualified applicant within the meaning of the statute (Act of February 25, 1920; 30 U.S.C. § 226(c) (1970)), and such an offer earns no priority from the time of filing.

However, unlike simultaneously filed oil and gas lease offers, regular offers filed "over the counter" may have their deficiencies cured by the subsequent submission of the required material. In an analogous case the Department held that an oil and gas lease offer was defective under the regulations when the offeror stated that she was not the sole party in interest and indicated that another person would acquire full interest in the lease, but did not properly identify the individual by stating both his given and his surname. Even so, it further held that the offer might be considered as cured and having priority from the time when a supplemental statement was submitted, signed by the offeror and the other interested party, which properly identified him. *A. M. Shaffer et al., Betty B. Shaffer,* 73 I.D. 293 (1966).

Accordingly, we hold that the filing of the appeal with the accompanying affidavit, in the appropriate number of copies, properly identifying C. Burglin as the other party in interest, had the effect of curing the deficiency with respect to each offer except F-5410 (for which no appeal was filed), and each offer except F-5410 may be reinstated with priority from 10:30 a.m., March 26, 1971, when the curative material was filed with this Board.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed as to F-5410 and as to the other offers the decision is set aside and the offers are remanded for further action consistent herewith.

/s/ EDWARD W. STEUBING
Edward W. Steubing, Member

We concur:

/s/ DOUGLAS E. HENRIQUES
Douglas E. Henriques, Member

/s/ MARTIN RITVO
Martin Ritvo, Member

UNITED STATES DEPARTMENT OF THE INTERIOR

OFFICE OF HEARING AND APPEALS

INTERIOR BOARD OF LAND APPEALS

4015 Wilson Boulevard
Arlington, Virginia 22203

R. C. BAILEY
And
C. BURGLIN

IBLA 73-223 Decided April 17, 1973

Appeal from a decision of the Alaska State Office, Bureau of Land Management rejecting appellants' oil and gas lease offers F-5411 through 5417 and F-5419 through 5421.

Dismissed.

Rules of Practice: Appeals: Statement of Reasons

A statement of reasons which does not point out the grounds upon which the decision appealed from is in error will be treated in the same manner as an appeal in which no statement of reasons is filed, and the appeal will be dismissed.

APPEARANCES: R. C. Bailey and C. Burglin, *pro se*.

OPINION BY MR. STUEBING

Our decision styled *R. C. Bailey*, 7 IBLA 266 (1972), affirmed the rejection of the above identified oil and gas lease offers. We held that the offers, although properly rejected, might be afforded priority from the time the defects in the original filings were cured, provided that all else was regular. The Alaska State Office gave affect to our decision. By its decision of November 17, 1972, the offers were again rejected because the defects were cured after the withdrawal of the lands had been effected by Public Land Order 4582 on January 17, 1969. This appeal results from that decision.

The so-called statement of reasons for this appeal does

not point out wherein the decision appealed from is in error. Instead, it disputes our decision of September 19, 1972, *supra*. In effect, it is an argument for reconsideration of that decision, but appellants have merely reiterated the contentions advanced in their previous appeal.

Because appellants have not raised any issues of fact or law which were not considered by the Board prior to the rendition of our earlier decision, there is no basis for reconsideration of that decision. Moreover, since the appellants have failed to indicate wherein the decision of the Alaska State Office is in error, the appeal is subject to dismissal. A statement of reasons which does not point out the grounds upon which the decision appealed from is in error will be treated in the same manner as an appeal in which no statement of reasons is filed, and the appeal will be dismissed. *United States v. Lewis Maus and Frank G. Morrison*, 6 IBLA 164 (1972), and cases therein cited.

Accordingly, pursuant to the authority vested in the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

/s/ Edward W. Stuebing
Edward W. Stuebing, Member

We concur:

/s/ DOUGLAS E. HENRIQUES
Douglas E. Henriques, Member

/s/ MARTIN RITVO
Martin Ritvo, Member

UNITED STATES DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

State Office

555 Cordova Street
Anchorage, Alaska 99501

CERTIFIED MAIL
RETURN RECEIPT REQUESTED Jan. 25, 1971

DECISION

R. C. Bailey	:	F-5410 1/
1325 Sixth Avenue	:	
Fairbanks, Alaska 99701	:	Oil and Gas

Offers Rejected

The above-identified oil and gas lease offers were filed in the Fairbanks Land Office on August 23, 1968. The offers were signed by the same person in whose name the offer was prepared, R. C. Bailey. There was a second signature on the forms which is not legible. The offer shows no other evidence that the second individual is a party to the offer except for a notation of "20%" and "80%" by each signature.

The intent of regulation 43 CFR 3111.1-1, which pertains to the preparation of oil and gas lease offers, is clear in that it calls for the form to be prepared in such a manner as to leave no doubt as to the identity of the person or persons seeking to enter into a contract with the Government. Since the subject offers were obviously intended as joint ones by two persons, and since the identity of one of the offerors is not discernible from the signature, it must be considered that the offer is incomplete. See *Al Warden, Lawrence T. Eastes,* A-28262 (May 31, 1960).

1/ F-5411 F-5414 F-5417 F-5421
F-5412 F-5415 F-5419
F-5413 F-5416 F-5420

Although the identity of one of several offerors is clearly shown on the offer form, the Bureau cannot issue a lease to that individual, even though that person may be entitled to a lease in his own right. The Department has held that a manager of land office has no duty and no authority to alter lease offers for the purpose of making them valid. His only duty is to determine whether such offers presented to him can be accepted. *W. B. Burnett et al.,* A-28037 (August 20, 1959).

Therefore the subject offers are hereby rejected.

The right of appeal to the Board of Land Appeals, Office of the Secretary, is allowed in accordance with the regulations in 43 CFR 1840. See enclosed form and Circular 2276. However, if an appeal is to be taken, the notice of appeal must be filed in the Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501, within 30 days from receipt hereof. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations.

Advance rentals submitted in connection with the offers will be authorized for refund at the end of the appeal period if no appeal is filed; or upon receipt of notice of intention to waive the right of appeal.

/s/ J. A. HAGANS
Acting Chief Adjudicator

Enclosures 2
Encl. 1—Form 1842-1
Encl. 2—Circular 2276

3110(931)
F-5411, etc. 1/

State Office
555 Cordova Street
Anchorage, Alaska 99501

CERTIFIED MAIL
RETURN RECEIPT REQUESTED Nov. 17, 1972

DECISION

R. C. Bailey et al. : F-5411, etc. 1/
1325 Sixth Avenue :
Fairbanks, Alaska 99701 : Oil and Gas

Offers Rejected

In accordance with *R. C. Bailey et al.*, 7 IBLA 266 (1972), the above-identified oil and gas lease offers are hereby reinstated with priority from 10:30 a.m., March 26, 1971, the date curative material was filed with the Board of Land Appeals.

Except as provided in 43 CFR 3111.1-1(e), an applicant for a lease must submit a complete and proper offer to earn a priority of filing time. Since the defect in the subject offers (co-offeror not identified) was not one of those listed under 43 CFR 3111.1-1(e) as curable without loss of priority, the offers obtained no priority until the defect was cured at 10:30 a.m., March 26, 1971. Therefore, these offers must be considered as filings submitted at 10:30 a.m., March 26, 1971.

On that date, all unreserved public lands in Alaska had been withdrawn from all forms of appropriation or disposition under the public land laws by Public Land Order

1/ F-5412 F-5417
F-5413 F-5418
F-5414 F-5419
F-5415 F-5420
F-5416 F-5421

4532, dated January 17, 1969, as amended by Public Land Orders 4962 and 5081. The withdrawal order remained in full force and effect until its revocation by the Alaska Native Claims Settlement Act of December 18, 1971 (P.L. 92-203; 85 Stat. 688). Simultaneously with the revocation, Section 17 of the act withdrew the lands from all forms of appropriation under the public land laws, including the mineral leasing laws, for a period of 90 days from the date of enactment of the act. Then, by Public Land Order 5179 of March 9, 1972, the lands embraced within the subject lease offers were further withdrawn and reserved in aid of legislation and for addition to or creation of the units of the National Park, Forest Wildlife Refuge and Scenic Rivers Systems and for classification. These land remain so withdrawn.

Thus, the lands are not, and were not on March 26, 1971, open to the filing of oil and gas lease offers, having been in a withdraw status since January 17, 1969.Therefore, the offers must be, and are, hereby rejected.

The right of appeal to the Board of Land Appeals, Office of Hearings and Appeals, is allowed in accordance with the regulations in 43 CFR 4.400. See enclosed form. However, if an appeal is to be taken, the notice of appeal must be filed in the Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501, within 30 days from receipt hereof. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations.

/s/ J. A. HAGANS

J. A. Hagans
Chief Adjudicator

Enclosures 2
Encl. 1—Form 1842-1
Encl. 2—Regulations

cc:
Mr. C. Burglin (sent certified)
Box 131
Fairbanks, AK 99707

Dir. (320)

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 Wilson Boulevard
Arlington, Virginia 22203

HELEN S. BAILEY
AND
C. BURGLIN

IBLA 73-281 Decided May 25, 1973

Appeal from a decision of the Alaska State Office, Bureau of Land Management rejecting appellants' oil and gas lease offers 5422, 5423 and 5424.

Dismissed.

Rules of Practice: Appeals: Dismissal—Rules of Practice: Appeals: Statement of Reasons

A statement of reasons which does not point out the grounds upon which the decision appealed from is in error will be treated in the same manner as an appeal in which no statement of reasons is filed, and the appeal will be dismissed.

APPEARANCES: Helen S. Bailey and C. Burglin, *pro se.*

OPINION BY MR. RITVO

Our decision styled *Helen S. Bailey,* 8 IBLA 210 (1972), affirmed the rejection of the above identified oil and gas lease offers. We held that the offers, although properly rejected, might be afforded priority from the time the defects in the original filings were cured, provided that all else was regular. The Alaska State Office gave effect to our decision. By its decision of January 24, 1973, the offers were again rejected because before the defects were cured, on March 26, 1971, the lands applied for had been withdrawn by Public Land Order 4582 on January 17, 1969, and have remained withdrawn since then, most recently by Public Land Order 5179, March 9, 1972. This appeal results from that decision.

The statement of reasons for this appeal does not point out wherein the decision appealed from is in error. Instead, it disputes our decision of November 15, 1972, *supra.* In effect, it is an argument for reconsideration of that decision, but appellants have merely reiterated the contentions advanced in their previous appeal.

Because appellants have not raised any issues of fact or law which were not considered by the Board prior to the rendition of our earlier decision, there is no basis for modification of that decision. Moreover, since the appellants have failed to indicate wherein the decision of the Alaska State Office is in error, the appeal is subject to dismissal. A statement of reasons which does not point out the grounds upon which the decision appealed from is in error will be treated in the same manner as an appeal in which no statement of reasons is filed, and the appeal will be dismissed. *R. C. Bailey,* 10 IBLA 281 (1973); *United States v. Maus,* 6 IBLA 164 (1972), and cases therein cited.

Accordingly, pursuant to the authority vested in the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal is dismissed.

/s/ MARTIN RITVO
Martin Ritvo, Member

We concur:

/s/ DOUGLAS E. HENRIQUES
Douglas E. Henriques, Member

/s/ NEWTON FRISHBERG
Newton Frishberg, Chairman

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
State Office
555 Cordova Street
Anchorage, Alaska 99501

CERTIFIED MAIL
RETURN RECEIPT REQUESTED JAN 25 1971

DECISION

Helen S. Bailey	:	F-5422-, F-5423,
1325 Sixth Avenue	:	and F-5424
Fairbanks, Alaska 99701	:	Oil and Gas

Offers Rejected

The above-identified oil and gas lease offers were filed in the Fairbanks Land Office on August 23, 1968. The lease offer forms were signed by the individual in whose name the offers were submitted, Helen S. Bailey. In addition they were signed by a second person whose signature was not legible. There was no other indication on the lease offers that there was a second party in interest except for the notation of "20%" and "80%" by each signature.

The intent of regulation 43 CFR 3111.1-1, which pertains to the preparation of oil and gas lease offers, is clear in that it calls for the form to be prepared in such a manner as to leave no doubt as to the identity of the person or persons seeking to enter into a contract with the Government. Since the subject offers were obviously intended as joint ones by two persons, and since the identity of one of the offerors is not discernible from the signature, it must be considered that the offer is incomplete. See *Al Warden, Lawrence T. Eastes,* A-28262 (May 31, 1960).

Although the identity of one of several offerors is clearly shown on the offer form, the Bureau cannot issue a lease to that individual, even though that person may be entitled to a lease in his own right. The Department has held that a manager of land office has no duty and no authority to alter lease offers for the purpose of making them valid.

His only duty is to determine whether such offers presented to him can be accepted. *W. B. Burnett et al.,* A-28037 (August 20, 1959).

Therefore the subject offers are hereby rejected.

The right of appeal to the Board of Land Appeals, Office of the Secretary, is allowed in accordance with the regulations in 43 CFR 1840. See enclosed form and Circular 2276. However, if an appeal is to be taken, the notice of appeal must be filed in the Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501, within 30 days from receipt hereof. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations.

Advance rentals submitted in connection with the offers will be authorized for refund at the end of the appeal period if no appeal is filed; or upon receipt of notice of intention to waive the right of appeal.

/s/ J. A. HAGANS
Acting Chief Adjudicator

Enclosures 2
Encl. 1—Form 1842-1
Encl. 2—Circular 2276

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF LAND APPEALS
4015 Wilson Boulevard
Arlington, Virginia 22203

EARNEST G. and DORA A. CARTER, C. BURGLIN;
MICHAEL F. SCANLAN, C. BURGLIN

IBLA 73-343
73-347 Decided July 6, 1973

Appeals from decisions of the Alaska State Office, Bureau of Land Management, dated March 7 and March 15, 1973, rejecting oil and gas lease offers F 8216 and 8214.

Affirmed.

Oil and Gas Leases: Applications: Generally—Oil and Gas Leases: First Qualified Applicant

Oil and gas lease offers are properly rejected when each offer shows on its face that there are two offerors with 20 percent and 80 percent interests respectively, but one of the offerors cannot be identified from the face of the offer form because his name is represented only by an illegible signature. An offeror whose identity cannot be established from the face of the offer cannot be regarded as the first qualified applicant for a lease, and such an offer earns no priority from the time of its filing.

APPEARANCES: Earnest G. and Dora A. Carter, Michael F. Scanlan, and C. Burglin, each *pro se*.

BY THE BOARD

In each case before us an oil and gas lease offer was filed bearing a notation that 20% was owned by a party whose only identity was an illegible signature. The offers were rejected because the applications could not be deemed complete due to the illegible signature.

The question here has been considered on many previous occasions, e.g., *William D. Sexton*, 9 IBLA 316 (1973); *R. C. Bailey*, 7 IBLA 266 (1972). We adhere to the ruling that oil and gas lease offers are properly rejected when each offer shows on its face that there are two offerors with 20 percent and 80 percent interests respectively, but one of the offerors cannot be identified from the face of the offer form because his name is represented only by an illegible signature.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1 the decisions appealed from are affirmed.

3110 (931)
F-8214

State Office
555 Cordova Street
Anchorage, Alaska 99501

CERTIFIED MAIL
RETURN RECEIPT REQUESTED MAR 15 1973

DECISION

Michael P. Scanlan et al.	:	F-8214
212 Bridget Street	:	
Fairbanks, Alaska 99701	:	Oil and Gas

Offer Rejected

The above-identified oil and gas lease offer filed October 16, 1968, was made in the name of Michael Scanlan et al., and one other person who was shown as an offeror with 20% interest but whose signature was illegible. The identity of this person was not divulged by the signature nor was it otherwise revealed.

The Department held in *R. C. Bailey et al.*, 7 IBLA 266 (1972) that oil and gas lease offers are properly rejected when one of the offerors cannot be identified from the face of the offer form because his name is represented only by an illegible signature. It further held that in over-the-counter offers such as this, the defect can be cured with the offers having priority of filing from the time that a supplemental statement is submitted signed by the offerors properly identifying each. Such a statement was filed at 1:48 p.m., December 29, 1970, identifying C. Burglin as the co-offeror. (See *William D. Sexton et al.*, 9 IBLA 316 (1973).)

Except as provided in 43 CFR 3111.1-1(e), an applicant for a lease must submit a complete and proper offer to earn a priority of filing time. Since the defect in the subject offer was not one of those listed under 43 CFR 3111.1-1(a)

as curable without loss of priority, the offer obtained no priority until the defect was cured at 1:48 p.m., December 29, 1970. Therefore, this offer must be considered as a filing submitted at 1:48 p.m., December 29, 1970.

On that date, all unreserved public lands in Alaska had been withdrawn from all forms of appropriation or disposition under the public land laws by Public Land Order 4582 dated January 17, 1969, as amended by Public Land Orders 4962 and 5081. The withdrawal order remained in full force and effect until its revocation by the Alaska Native Claims Settlement Act of December 18, 1971 (P.L. 92-203; 85 Stat. 688). Simultaneously with the revocation, Section 17 of the act withdrew the lands from all forms of appropriation under the public land laws, including the mineral leasing laws, for a period of 90 days from the date of the enactment of the act. Then, by Public Land Order 5179 of March 9, 1972, lands embraced within the subject lease offer were further withdrawn and reserved in aid of legislation and for addition to or creation of units of the national forest, wildlife refuge, and wild and scenic rivers system and for classification. These lands remain so withdrawn.

Thus, the lands are not and were not on December 29, 1970, open to the filing of oil and gas lease offers having been in a withdrawn status since January 17, 1969. Therefore, the offer must be and is hereby rejected. (See *James D. Johnson et al.*, 8 IBLA 348 (1972) and *William D. Sexton et al., supra.*)

The right of appeal to the Board of Land Appeals, Office of Hearings and Appeals, is allowed in accordance with the regulations in 43 CFR 4.400. See enclosed form. However, if an appeal is to be taken, the notice of appeal must be filed in the Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501, within 30 days from receipt hereof. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations.

Advance rental submitted in connection with the offer will

be authorized for refund at the end of the appeal period if no appeal is filed, or upon receipt of notice of intention to waive the right of appeal.

/s/ J. A. HAGANS

J. A. Hagans
Chief Adjudicator

Enclosures 2
Encl. 1 - Form 1842-1
Encl. 2 - Regulations

cc:
Mr. C. Burglin
P.O. Box 131
Fairbanks, Alaska 99707
(Certified Mail)

3110 (931)
F-8216

State Office
535 Cordova Street
Anchorage, Alaska 99501

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

MAR 7 1973

DECISION

Dora Carter et al.	:	F-8216
1208 Denali Way	:	
Fairbanks, Alaska 99701	:	Oil and Gas

Offer Rejected

The above-identified oil and gas lease offer filed October 16, 1968 was made in the name of Dora E. Carter et al., and it was signed by Dora Carter, Earnest G. Carter and one other person who was shown as an offeror with 20% interest but whose signature was illegible. The identity of

this person was not divulged by the signature nor was it otherwise revealed.

The Department held in *R. C. Bailey et al.*, 7 IBLA 266 (1972) that oil and gas lease offers are properly rejected when one of the offerors cannot be identified from the face of the offer form because his name is represented only by an illegible signature. It further held that in over-the-counter offers such as these, the defect can be cured with the offers having priority of filing from the time that a supplemental statement is submitted, signed by the offerors properly identifying each. Such a statement was filed at 1:48 p.m., December 29, 1970, identifying C. Burglin as the co-offeror with Dora Carter and Earnest Carter. (See *William D. Sexton et al.*, 9 IBLA 316 (February 13, 1973).)

Except as provided in 43 CFR 3111.1-1(e), an applicant for a lease must submit a complete and proper offer to earn a priority of filing time. Since the defect in the subject offers was not one of those listed under 43 CFR 3111.1-1(e), an applicant for a lease must submit a complete and proper offer to earn a priority of filing time. Since the defect in the subject offers was not one of those listed under 43 CFR 3111.1-1(e) as curable without loss of priority, the offer obtained no priority until the defect was cured at 1:48 p.m., December 29, 1970. Therefore, this offer must be considered as filed at 1:48 p.m., December 29, 1970.

On that date, all unreserved public lands in Alaska had been withdrawn from all forms of appropriation or disposition under the public land laws by Public Land Order 4582 dated January 17, 1969, as amended by Public Land Orders 4962 and 5081. The withdrawal order remained in full force and effect until its revocation by the Alaska Native Claims Settlement Act of December 18, 1971 (P.L. 92-203; 85 Stat. 688). Simultaneously with the revocation, Section 17 of the act withdrew the lands from all forms of appropriation under the public land laws including the mineral leasing laws for a period of 90 days from the date of the enactment of the act. Then, by Public Land Order 5179 of March 9, 1972, lands embraced within the subject lease offers were further withdrawn and reserved in aid of legislation and for addition to or creation of the units

of the national forest, wildlife refuge, and wild and scenic rivers system and for classification. These lands remain so withdrawn. Thus, the lands are not, and were not on December 29, 1970, open to the filing of oil and gas lease offers having been in a withdrawn status since January 17, 1969. Therefore, the offer must be, and is hereby, rejected. (See *James D. Johnson et al.*, 8 IBLA 348 (1972) and *William D. Sexton, supra.*)

The right of appeal to the Board of Land Appeals, Office of Hearings and Appeals, is allowed in accordance with the regulations in 43 CFR 4.400. See enclosed form. However, if an appeal is to be taken, the notice of appeal must be filed in the Alaska State Office, 555 Cordova Street, Anchorage, Alaska 99501, within 30 days from receipt hereof. To avoid summary dismissal of the appeal, there must be strict compliance with the regulations.

Advance rental submitted in connection with the offer will be authorized for refund at the end of the appeal period if no appeal is filed; or upon receipt of notice of intention to waive the right of appeal.

/s/ J. A. HAGANS

J. A. Hagans
Chief Adjudicator

Enclosures 2
Encl. 1 - Form 1842-1
Encl. 2 - Regulations

cc:
Mr. C. Burglin
P.O. Box 131
Fairbanks, Alaska 99707
(CM-RRR)

APPENDIX B

District Court Opinion

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

C. BURGLIN and WILLIAM D. SEXTON,
Plaintiffs,
v.
ROGERS C. B. MORTON, et al,
Defendants.

C. BURGLIN and R. C. BAILEY,
Plaintiffs,
v.
THE UNITED STATES OF AMERICA, et al,
Defendants.

C. BURGLIN and HELEN BAILEY,
Plaintiffs,
v.
THE UNITED STATES OF AMERICA, et al,
Defendants.

C. BURGLIN, EARNEST G. CARTER, DORA A. CARTER and MICHAEL F. SCANLAN,
Plaintiffs,
v.
THE UNITED STATES OF AMERICA, et al,
Defendants.

No. F-9-73
Consolidated

Filed
Jul 24, 1974
United States
District Court
District of
Alaska

By.....
Deputy

MEMORANDUM AND ORDERS

THIS CAUSE comes before the Court on a motion for summary judgment filed by defendants. For purposes of this memorandum and order, causes F-9-73, F-15-73, F-19-73 and F-21-73 have been consolidated under the cause entitled F-9-73.

In substance, the operative facts appear as follows. On August 23, 1968, certain joint noncompetitive oil and gas lease offers were filed in Fairbanks, Alaska by R. C. Bailey and another person whose signature was illegible and whose identity was not otherwise apparent from the face of the offers. These offers comprise the subject matter of the cause formerly entitled F-15-73.

On the same date, certain other join noncompetitive oil and gas lease offers were also filed in Fairbanks. The offerors were Helen Bailey and another person whose signature was illegible and whose identity was not otherwise apparent from the face of the offers. These offers form the subject matter of the cause formerly entitled F-19-73.

On September 27, 1968, other joint noncompetitive oil and gas lease offers were filed in Anchorage, Alaska, by William Sexton and another person whose signature was illegible and whose identity was not otherwise disclosed by the offers. These offers form the basis of the cause formerly entitled F-9-73.

On October 16, 1968, a joint noncompetitive oil and gas lease was filed by Michael Scanlan and another person whose signature was illegible and whose identity was not manifested in the offers. On the same date, a joint noncompetitive oil and gas lease offer was filed by Dora Carter, Earnest Carter, and another person whose signature was illegible and whose identity was not revealed on the face of the offers. Together, these two offers comprise the subject matter of the cause formerly entitled F-21-73.

In each instance enumerated above, the lease offers were rejected by the Bureau of Land Management on the ground that the offers were incomplete under 43 C.F.R. 3111.1-1, since the identity of one of the co-offerors could not be determined from the illegible signatures or from the body of the lease offer.

In each of those matters, the defective lease offers were cured by a showing that the illegible signatures were that of Mr. Burglin. Each lease offer had priority as of the date of curing.

However, in each instance above described, the cure

was effected on a date subsequent to the withdrawal of the subject lands. Originally the lands were withdrawn from oil and gas entry under Public Land Order 4582 (January 17, 1969). The lands have remained withdrawn under the Alaska Native Claims Settlement Act, 43 U.S.C.A. 1601 (December 18, 1971) and Public Land Order 5179 (March 9, 1972).

In each of the above instances, the lease offers were tendered a second time to the appropriate governmental agency. Each offer was rejected on the grounds that the lands involved had been withdrawn from gas and oil entry.

Plaintiffs exhausted their administrative remedies before the Interior Board of Land Appeals, and subsequently commenced this action for judicial review of those adverse administrative decisions under the provisions of the Administrative Procedure Act, 5 U.S.C.A. §701-§706.

The thrust of the complaint is that defendants acted arbitrarily and unlawfully in concluding that the original lease offers should be rejected on the basis of Mr. Burglin's illegible signature.

Subsequently, defendants filed this motion for summary judgment, contending that plaintiffs cannot possibly claim a right to the subject lands because plaintiffs never acquired a vested interest on the date of filing the original lease offers which survived the subsequent withdrawal of the lands. Assuming arguendo that the original lease offers were erroneously rejected, and that the original lease offers were otherwise sufficient, contend defendants, plaintiffs acquired no right to receive leases, so that when the lands subsequently were withdrawn from entry, plaintiffs' subsequent tendering of the cured lease offers was properly rejected.

The sole issue, therefore, is whether plaintiffs obtained any vested rights to receive leases by the filing of their original lease offers.

In support of their position, defendants have cited an appropriate excerpt from *McDade v. Morton*, 353 F. Supp. 1006, 1009 (D.D.C. 1973):

> It is clear from the express language of Section 17 of the Mineral Leasing Act, as amended, 30 USC §226, that public lands of the United States "which are known or believed to contain oil or gas deposits may be leased" [Sec. 226(a)] by the Secretary of the Interior and that, "if the lands to be leased are not within any known geological structure of a producing oil or gas field, the person first making application for the lease who is qualified to hold a lease ° ° ° shall be entitled to a lease of such lands without competitive bidding." [Sec. 226(c)]. The Courts have long construed these provisions as giving the Secretary broad direction in the issuance of oil and gas leases, the only limitation upon his discretion (as to land which is not within any known geologic structure of a producing oil or gas field) being that, *if* the land is leased it *must* be leased to the first person making application therefor who is qualified under the statute and applicable regulations to receive a lease. (citations omitted) Given this broad discretion of the Secretary and the explicit statutory limitation, the courts have consistently held that no right to receive an oil and gas lease is obtained by the filing of a lease offer, even though the offeror be the "first qualified applicant", and that the Secretary may determine at any time prior to the acceptance of a lease offer not to lease particular land even if offers for such land were filed long before the determination not to lease or were filed in response to a direct invitation to file. (citations omitted)

From *McDade* and other authorities cited by defendants, it is clear that plaintiffs did not obtain any vested rights to oil and gas leases by the original filing of their joint noncompetitive oil and gas lease offers. The land having been withdrawn before the lease offers were tendered a second time, it is apparent that defendants acted properly in rejecting those cured lease offers. See *Udall v. Tallman*, 380 U.S 1, 4 (1965); *Schraier v. Hickel*, 419 F.2d 663 (D.C. Cir. 1969); *Duesing v. Udall*, 350 F.2d 748, 750 (D.C. Cir. 1965); *Pease v. Udall*, 332 F.2d 62, 63-64 (9th Cir. 1964); *Thor-Westcliffe Development, Inc. v. Udall*, 314 F.2d 257, 259 (D.C. Cir. 1963).

There being no genuine issues of material fact, and it appearing that defendants are entitled to judgment as a matter of law under Fed. R. Civ. P. 56(c),

IT IS ORDERED:

1. THAT defendants' motion for summary judgment is granted.

2. THAT counsel for defendants forthwith prepare an appropriate judgment form.

DATED at Anchorage, Alaska, this 23rd day of July, 1974.

JAMES A. VON DER HEYDT
United States District Judge

cc: Edward R. Merdes
Clem Stephenson
Stephen Cooper, Asst. U. S. Attorney

APPENDIX C

Order Denying Petition For Rehearing

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

C. BURGLIN, et al., *Appellants,* v. ROGERS C. B. MORTON, AS THE SECRETARY OF THE INTERIOR OF THE UNITED STATES, et al., *Appellees.*	No. 74-2761 ORDER Filed Jan. 27, 1976 Emil E. Melfi, Jr. Clerk U. S. Court of Appeals

Before: DUNIWAY, TRASK and SNEED, Circuit Judges.

The petition for rehearing is denied.

APPENDIX D

Court of Appeals Opinion

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

C. BURGLIN, et al.,
Plaintiffs-Appellants,

vs.

ROGERS C. B. MORTON, AS THE SECRETARY OF THE INTERIOR OF THE UNITED STATES, et al.,
Defendants-Appellees.

No. 74-2761

OPINION

[December 19, 1975]

Appeal from the United States District Court
for the District of Alaska

Before: DUNIWAY, TRASK and SNEED, Circuit Judges.

SNEED, Circuit Judge:

Plaintiffs filed four lawsuits charging that the Secretary of the Interior had wrongfully rejected their several offers for non-competitive oil and gas leases. The district court consolidated the cases, and granted summary judgment in favor of the government defendants. Plaintiffs appeal from that decision. We find that there is no genuine issue of material fact with respect to any properly justiciable issue, and affirm the district court's dismissal as a matter of law.

During the latter half of 1968 four small groups of individual plaintiffs (plaintiff Burglin being a member of each group) made several offers for oil and gas leases in the State of Alaska. Each of the offers, made pursuant to Section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. § 226, was rejected by the Bureau of Land Management on the ground that one of the lease offerors (Burglin in each case) could not be identified on the offer form due to an illegible signature. Each of the rejections was appealed

to the Interior Board of Land Appeals, which affirmed in each case.[1]

Although the signature defects were cured subsequent to the date of original filing, in the interim the lands had been withdrawn from oil and gas entry under Public Land Order 4582 (January 17, 1969). The lands have remained withdrawn under the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 (December 18, 1971), and Public Land Order 5179 (March 9, 1972). Since the land was withdrawn prior to the date on which plaintiffs' cured offers became effective, the Bureau of Land Management again rejected plaintiffs' offers and the Board affirmed. Plaintiffs then sought judicial review.

Plaintiffs first urge that 30 U.S.C. § 226(c) required the Secretary to issue the leases to them. The offers were made pursuant to the Mineral Leasing Act of 1920, 30 U.S.C. §§ 181 et seq. Section 226 of Title 30 provides in pertinent part:

> § 226. *Lease of oil and gas lands—Authority of Secretary.*
>
> (a) All lands subject to disposition under this chapter which are known or believed to contain oil or gas deposits may be leased by the Secretary.
>
> • • • •
>
> *Lands not within geologic structure of a producing oil or gas field; first qualified applicant.*
>
> (c) If the lands to be leased are not within any known geological structure of a producing oil or gas field, the person first making application for the lease who is qualified to hold a lease under this chapter shall be entitled to a lease of such lands without competitive bidding. Such leases shall be conditioned upon the payment by the lessee of a royalty of 12½ per centum in amount or value of the production removed or sold from the lease.

The permissive word "may" in Section 226(a) allows the Secretary to lease such lands, but does not require him to do so.

---

[1] *R. C. Bailey,* et al., 7 IBLA 266 (1972); *Helen S. Bailey,* 8 IBLA 145 (1972); *William D. Seaton,* et al., 9 IBLA 316 (1973); *Earnest and Dora A. Carter,* et al., 12 IBLA 181 (1973).

Although Section 226(c) requires the Secretary to issue the lease to the first qualified applicant *if* the land is leased, the Secretary has discretion to refuse to issue any lease at all on a given tract. *Udall v. Tallman*, 380 U.S. 1, 4 (1965). As this Court found in *Pease v. Udall*, 332 F.2d 62 (9th Cir. 1964):

> ". . . [T]he Mineral Leasing Act has consistently been construed as leaving to the Secretary, within his discretion, a determination as to what lands are to be leased thereunder." *Id.* at 63.

Given the Secretary's discretion whether to lease the lands at all, plaintiffs' offer to lease could not, in and of itself, vest plaintiffs with any right to a lease, and plaintiffs' contention that Section 226(c) required the Secretary to issue the leases was properly dismissed as a matter of law.[2]

Plaintiffs further allege a cause of action grounded upon abuse of discretion or arbitrary and capricious conduct by the Secretary in exercising his discretionary authority. Actually, plaintiffs allege two different types of abuse of discretion. One relates to the initial rejection of plaintiffs' offers due to the illegible signature, the other to the subsequent withdrawal of the lands by the Secretary and the Congress.

With respect to the withdrawal of the lands, plaintiffs' complaints portray a grandiose scheme perpetrated by high officials of the Department of Interior malevolently to restrict Alaskan oil production. The complaints, couched only in the most conclusory and broad terms, allege that the Secretary's policies are arbitrary, capricious, and done "to evade and circumvent the will of the people of the United States, as expressed in the 1920 Mineral Leasing Act."

There is absolutely no evidence in the record to suggest the existence of the sinister scheme alleged by plaintiffs. But plaintiffs urge that summary judgment under *Fed. R. Civ. P.* 56

[2]Plaintiffs also allege that the withdrawal of land pursuant to Public Land Order 4582 was a constitutionally infirm taking of plaintiffs' property without due process of law. Since the filing of the applications did not vest in the plaintiffs any right to leases, or generate any legal interest similar to a property right, *Duesing v. Udall*, 350 F.2d 748, 750-51 (D.C. Cir. 1965), there could be no taking, and this contention is without merit.

was not appropriate since defendants did not come forward with facts to disprove the conspiracy, and since plaintiffs were not given access to defendants' files in order to obtain evidence with which to prove the conspiracy. The Government by affidavit could not set forth all the specific evidence needed to demonstrate the absence of the alleged conspiracy. To do so would entail the recitation of the long history of the Government's many actions affecting the petroleum resources of this nation. The Government's only practical response is to deny the conspiracy in terms no less broad and general than those used in the complaints. Perhaps strict adherence to the dictates of summary judgment would require this formality, but for reasons discussed below, we need not reach this issue. Furthermore, we find little merit in plaintiffs' argument that they cannot adduce any factual basis for their allegations without discovery. Plaintiffs cannot even describe the facts for which they hope to find support. As Professor Moore states:

> "The mere averment of exclusive knowledge or control of the facts by the moving party is not adequate: the opposing party must show to the best of his ability what facts are within the movant's exclusive knowledge or control; what steps have been taken to obtain the desired information pursuant to the discovery procedures under the Rules; and that he is desirous of taking advantage of these discovery procedures." 6 J. MOORE, FEDERAL PRACTICE ¶ 56.24 at 2876 (2d ed. 1948).

However, the crucial difficulty with plaintiffs' position lies far from the technical confines of Rule 56. The action of the Secretary in withdrawing lands was mandated by Congress, 43 U.S.C. § 1616(d)(2)(A); the selection of the lands to be withdrawn was an *exercise* of discretion, rather than an abuse of discretion. We do not doubt that Congress' withdrawal of huge amounts of Alaskan land from lease entry perhaps restricted oil production in the United States at a time, as plaintiffs allege, of a "strong and pressing need for and a great shortage of domestically produced oil and gas." However, it is the proper function of Congress and the Executive to set and implement the national energy policy. It is not the function of the judiciary generally to investigate and review the wisdom of this policy. We are a

court, not a committee of Congress or department of the Executive. Plaintiffs' complaints, couched in broad terms of public policy, simply do not allege a justiciable cause of action. The gravamen of this aspect of plaintiffs' complaints is a policy determination for which judicially manageable standards are lacking. *See Baker v. Carr*, 369 U.S. 186 (1962).

The only remaining aspect of plaintiffs' complaints concerns the alleged abuse and arbitrariness with respect to the initial rejection of the offers due to the illegible signature. Although we have shown that the Secretary has discretion to lease the lands, the initial rejection of plaintiffs' offers must not have been arbitrary and capricious, thereby precluding plaintiffs from obtaining leases before withdrawal of the lands.

The applicable regulations require that "[e]ach offer must be filled in by typewriter or printed plainly in ink and signed in ink by the offeror . . . ." 43 C.F.R. § 3111.1-1. The Bureau of Land Management and the Interior Board of Land Appeals have interpreted this to require more than a legally binding signature. *See* cases cited in footnote 1, *supra*. The signatures must be plainly legible or accompanied by a clear identification of all persons whose signatures appear thereon.

When courts are called upon to review the Secretary's interpretation of regulations made by him, his interpretation is entitled to deference. *Harvey v. Udall*, 384 F.2d 883, 885 (10th Cir. 1967). In the words of the United States Supreme Court:

> "The Secretary's interpretation may not be the only one permitted by the language of the orders, but it is quite clearly a reasonable interpretation; courts must therefore respect it." *Udall v. Tallman, supra* at 4.

The plaintiffs have not made a tender of evidence sufficient to overcome the presumption of validity of administrative action. This Court "does not presume to substitute its discretion for that of the Secretary." *Ducsing v. Udall, supra* at 752. We hold that there was no abuse of discretion in the initial rejection of the applications.

This conclusion is not altered even if it be true that certain employees in the Anchorage Land Office knew plaintiff Burglin's signature. Ordinarily no duty exists on the part of such em-

ployees to inform offerors of their failure to comply with the Secretary's regulations. Compliance with such regulations is the offerors' responsibility. Even if such employees in this case wrongfully misled the plaintiff Burglin we reject the conclusion that the Secretary is estopped to reject the offers. The alleged improprieties of the employees in the Land Office simply cannot be used to compel the Government to accept a lease offer that it had statutory discretion to reject. None of the conduct alleged herein approaches the magnitude necessary for us to consider whether that conduct would be sufficient to estop the Government from either requiring proper applications or rejecting completed applications.[3]

Since we have determined from the record that there are no material issues of triable fact relevant to any cognizable cause of action, we need not discuss the sufficiency of, or rely upon, the Government's affidavit. We express no opinion as to the existence of a claim for damages against either the United States or the employees of the Anchorage Land Office due to any alleged improper conduct of the employees with respect to the signature issue. Nor do we wish to intimate under what circumstances there exists federal jurisdiction to hear such claims.

AFFIRMED.

---

[3] *Cf.* INS v. Hibi, 414 U.S. 5, 8 (1973) (at the minimum, affirmative misconduct necessary to estop Government with respect to time deadline to file naturalization applications.) *See also* Santiago v. INS, ... F.2d ..... (9th Cir. 1975).

APPENDIX E

Petition for Rehearing

No. 74-2761

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

C. BURGLIN and WILLIAM D. SEXTON,
Petitioners,
vs.
ROGERS C. B. MORTON as the Secretary
of Interior of the United States, et al.,
Respondents.

C. BURGLIN and R. C. Bailey,
Petitioners,
vs.
THE UNITED STATES OF AMERICA, et al.,
Respondents.

C. BURGLIN and HELEN BAILEY,
Petitioners,
vs.
THE UNITED STATES OF AMERICA, et al.,
Respondents.

C. BURGLIN, EARNEST G. CARTER,
DORA A. CARTER and MICHAEL F. SCANLAN,
Petitioners,
vs.
THE UNITED STATES OF AMERICA, et al.,
Respondents.

APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF ALASKA

PETITION FOR REHEARING

William Robert Hickman of
Reed, McClure, Moceri & Thonn, P.S.
Attorneys for Appellants

Office and P. O. Address:
1701 Bank of California Center
900 Fourth Avenue
Seattle, Washington 98164

Telephone: (206) 292-4900

PETITION FOR REHEARING

COME NOW the plaintiffs-appellants, pursuant to Rule 40 of the Rules of Appellate Procedure, and they do petition this court to rehear this matter.

The points upon which petitioners rely are:

1. The court overlooked the mandatory provision of 5 U.S.C. § 706 which makes mandatory the review of the agency record in cases of judicial review of agency action:

> "In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party . . . ."

2. The court destroyed the mandatory provisions of Civil Rule 56(e) that summary judgment affidavits be based on "personal knowledge," contain facts "admissible in evidence," show that the affiant is "competent to testify," and have attached thereto certified copies of all papers referred to in the affidavit.

3. The court made a finding of fact as to illegibility of a signature, and affirmed a finding of fact as to the illegibility of a signature,

BEST COPY AVAILABLE

notwithstanding that neither this court nor the trial court was presented with a single example of that signature.

4. The court has shirked its duty to provide the American people with even the most De minimis protection from the unholy alliance of the oil cartel and the federal administration.

ARGUMENT IN SUPPORT OF PETITION

This case was argued September 3, 1975, in Anchorage. The court filed its opinion almost four months later. Since it was obvious at the oral argument that the court was extremely conversant with the case, the length of time spent writing the opinion was obviously spent preparing the opinion and not spent learning about the case. Indeed, a casual reading of the opinion leaves one impressed with the inherent logical development and internal cohesion of the presentation. The opinion was not whipped out, but was the subject of painstaking effort. However, logical development, cohesiveness and effort do not serve as substitutes for justice. Given sufficient time, motivation and intellectual acuteness, almost any conclusion can be convincingly presented. In our own lifetimes we

have seen and heard appealing presentations on why Jews are inferior and thus expendable, why Blacks are ordained by God as second-class citizens and why Israel is the birth right of all Jews.

Thus, it is clear that we must look beyond the fact that Judge Sneed works hard, that he has a logical mind, that he is thorough, and that he is smart. We must perform an abstraction from the words he used to perceive the underlying form, i.e., the esse of the opinion. Then we perceive how Judge Sneed bobs and weaves like an Ali, pirouettes like a Nureyev and finally delivers in the clutch like a Rick Berry.

A tremendous performance. But is this a judicial opinion? It would have been less surprising to find this in the appellees' brief, the single overriding, albeit unarticulated, premise is, affirm at all cost. Affirm, despite the mandatory statutory language. Affirm, despite the case law in this circuit. Affirm, despite the Civil Rules. Affirm, despite the fact that the oil cartel and the federal administration are extorting millions of dollars from the American people so that the American people can use the very resources they already own. Affirm. Affirm. Affirm.

Why? Why have you thrown us out of court, before we even had our "day in court?" Why is this court giving its impramatur to the lynching of Cliff Burglin? All we have asked of this court

was a chance to prove our case. If we find we cannot find the facts to support our case we will nonsuit. If at trial the judge finds the facts do not support our case, he will dismiss. If after the trial the judge finds we have not proven our case by preponderance, he will grant judgment to the defendants. Why then does this court deny us even the opportunity to prove our case?

I. THE OPINION FAILS TO TAKE COGNIZANCE OF THE SPECIFIC MANDATE OF 5 U.S.C. § 706.

The complaints in the four lawsuits were all expressly premised on 5 U.S.C. § 706 (see for example R.O.A. page 3). In addition, 5 U.S.C. § 706 was set out by the plaintiff's counsel in his Memorandum in Opposition to Summary Judgment (R.O.A. 72).

Section 706 is part of Chapter 7 and it relates to judicial review of administrative determinations. It provides:

> "In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party . . . ."

The imperative "shall" indicates that the court had no alternative but to make its determination after it had reviewed the record, either in whole or in part. United States v. Hughes, 414 F.2d 1330 (9th Cir. 1969). In this case neither was done as no record was ever presented to the court for review. The

statute requires a review of the record. No "record" was ever presented either to the trial court or this court. There being no record upon which the "determinations" could be based, those determinations are fatally infirm.

II. THE FINDINGS OF FACT AS TO ILLEGIBILITY MADE BY THE TRIAL COURT AND AFFIRMED BY THIS COURT HAVE NEITHER QUANTUM, SPECK NOR EVEN SCINTILLA OF EVIDENCE TO SUPPORT IT.

The trial court judge determined that Cliff Burglin's signature was illegible (R.O.A. 80). But he never saw that signature. How in the world can a judge judge that which he has never seen. How can a judge make such a determination and conclude that the finding of illegibility was not arbitrary and capricious when he, contrary to statute, has not received the record which contains the example of the signature.

If the District Court was wrong, how much greater than is the sin of this court when it approves such unjudicial conduct. No one, not even God Almighty Himself, judges until he has the facts before him. How is it then that two courts have judged that Cliff Burglin's signature was illegible, but neither court has ever seen that signature?

III. IF THE GOVERNMENT HAD FOLLOWED THE MANDATORY DICTATES OF CIVIL 56(e) IT WOULD HAVE PROVEN PLAINTIFF'S CASE.

When this appeal first came to the attention of the undersigned the most outstanding aspect of it was the total disregard of Civil Rule 56(e). In fact, there was not even a pretext of

compliance. In light of this court's well known and well earned reputation for requiring adherence to the rules of summary judgment (see for example Washington v. Maricopa County, 143 F.2d 879 (9th Cir. 1944) and United States v. Dibble, 429 F.2d 598 (9th Cir. 1970)), it seemed clear that this court would rather summarily reverse the summary judgment. The case itself might serve as a vehicle for the court to instruct counsel in this circuit much as the court in Welcher v. United States, 14 F.R.D. 235 (E.D. Ark. 1953), where an identical situation was presented by the government:

> "This court holds that it does not rise to the dignity of evidence requiring judicial acceptance and recognition, and specifically that it fails to meet the rather stern test of Rule 56(e) . . . . Moreover, the writer of this memorandum is not disposed to encourage counsel in actions pending before the court to offer themselves as witnesses touching matters essential to the issues pending in the cases. That practice too easily proceeds towards the perversion of the attorney's office and ought steadfastly to be frowned upon."

However, instead of a summary reversal or even a lecture on appropriate practice, the court first glossed over the point by saying that this situation called for a procedure not provided for in the rules (Opinion, page 4, line 18), then by saying the appellant's contention was merely "technical" (Opinion, page 5, line 2), notwithstanding that it was based on this court's own decisions,and finally by saying that it did not rely on the government's affidavit anyway (Opinion, page 7, line 5). If the

court did not rely on the affidavit, then what, pray tell, did it rely on. There is nothing else in the record except the pleadings. Did the court grant a judgment on the pleadings based on nothing but the defendant's denial of the allegations? This novel approach by which the court can dismiss complaints, save in those cases where the defendant confesses judgment, will certainly clear up the backlog of cases in the District Courts. But, again, will it be justice?

On page 4 of the Opinion the court stated:

> "The Government by affidavit could not set forth all the specific evidence needed to demonstrate the absence of the alleged conspiracy. To do so would entail the recitation of the long history of the Government's many actions affecting the petroleum resources of this nation."

We submit that if the government had set forth by affidavit the long history of the government's many actions affecting the petroleum resources of this nation, the plaintiff's case of conspiracy would have been proven. Or else, the author of the affidavit would be guilty of perjury by omission.

Moreover, and perhaps most revealing, is the fact that the government's affidavit does not even deny the existence of the conspiracy.

The mandatory dictates of Civil Rule 56(e) were established to insure that due process is afforded even in a summary disposition

of a case. Those procedures are an absolute minimum. To allow one party to slip out of litigation without even requiring the most minimal observance of the dictates of due process is not justice.

IV. THE COURT HAS ABDICATED ITS RESPONSIBILITY TO PROTECT THE AMERICAN PEOPLE.

At oral argument we noted for the court the obvious situation that the federal legislature and the federal executive branch have been incorporated into the oil cartel in this country. In the opinion the court acknowledged this but said it could do nothing about it:

> "We do not doubt that Congress' withdrawal of hugh amounts of Alaskan land from lease entry perhaps restricted oil production in the United States at a time, as plaintiffs allege, of a 'strong and pressing need for and a great shortage of domestically produced oil and gas.' However, it is the proper function of Congress and the Executive to set and implement the national energy policy. It is not the function of the judiciary generally to investigate and review the wisdom of thiis policy. We are a court, not a committee of Congress or department of the Executive. Plaintiffs' complaints, couched in broad terms of public policy, simply do not allege a justiciable cause of action. The gravamen of this aspect of plaintiffs' complaints is a policy determination for which judicially manageable standards are lacking."

Perhaps policy determination is not something for which there are judicially manageable standards. However, there are many aspects to this case for which there are judicially manageable standards. There is a statute which says the record must be

presented for review. There is a rulewhich says that a party seeking a summary dismissal must prove something. There are cases which say that failure to follow the rule necessitates a reversal. These are all "judicially manageable standards." Why then does the court tell us, on the one hand, it cannot help us, and on the other hand it forgets the statute, buries the rule, and ignores its own cases, so that it can affirm an unconscionable decision in favor of the federal administration? If the court is really sincere when it says it cannot go outside its own bailiwick to help us, why then does it not at least play it straight down the line in its own bailiwick. The oil cartel and the federal administration are quite powerful enough that they do not need help from this court. The plaintiffs are not big, are not powerful. They are little people. While all are equal before the law, all before the law are not equal. But we do not ask for any special treatment. We do not ask for any favors. All we ask is that this particular litigation be carried on pursuant to the statute, pursuant to the rule, and pursuant to the case law.

CONCLUSION

The layman's view of law, judges and lawyers, can be seen in this verse by Ambrose Bierce:

"Once Law was sitting on the bench,
And Mercy knelt a-weeping.
'Clear out!' he cried, 'disordered wench!
Nor come before me creeping.
Upon your knees if you appear,
'Tis plain you have no standing here.'"

"Then Justice came. His Honor cried:
'Your status?--devil seize you!'
'Amica curiae,' she replied--
'Friend of the court, so please you.'
'Begone!' he shouted--'there's the door--
I never saw your face before!'"

Justice, that is all we seek; a procedure according to statute and rule in which facts, not allegations nor denials thereof, will control.

We urge this court to withdraw the opinion filed, to reconsider this matter and to reverse the judgment appealed from.

Respectfully submitted,

William Robert Hickman

William Robert Hickman of
Reed, McClure, Moceri & Thonn, P. S.
Of Attorneys for Petitioners

BEST COPY AVAILABLE

In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1223

C. BURGLIN, ET AL., PETITIONERS

v.

THOMAS S. KLEPPE, SECRETARY OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A-32 to A-37) is reported at 527 F.2d 486. The opinion of the district court (Pet. App. A-26 to A-30) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on December 19, 1975, and a timely petition for rehearing was denied on January 27, 1976 (Pet. App. A-31). The petition for a writ of certiorari was filed on February 26, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the district court properly held that the Secretary of the Interior did not abuse his discretion, or otherwise act contrary to law, in rejecting petitioners' offers to enter into certain oil and gas leases.

STATUTE AND REGULATION INVOLVED

Section 17 of the Mineral Leasing Act of 1920, 41 Stat. 443, as amended, 30 U.S.C. 226, provides in pertinent part as follows:

> (a) *Authority of Secretary*
>
> All lands subject to disposition under this chapter which are known or believed to contain oil or gas deposits may be leased by the Secretary.
>
> * * * * *
>
> (c) *Lands not within geologic structure of a producing oil or gas field; first qualified applicant.*
>
> If the lands to be leased are not within any known geological structure of a producing oil or gas field, the person first making application for the lease who is qualified to hold a lease under this chapter shall be entitled to a lease of such lands without competitive bidding. Such leases shall be conditioned upon the payment by the lessee of a royalty of 12 1/2 per centum in amount or value of the production removed or sold from the lease.

43 C.F.R. 3111.1-1 (1973) is set forth in the petition at pages 5-6.

STATEMENT

During the latter half of 1968, petitioners filed with the Department of the Interior's Bureau of Land Management (BLM) numerous joint offers to enter into noncompetitive oil and gas leases for areas within the State of Alaska. These offers, which were made pursuant to Section 17 of the Mineral Leasing Act, as amended, 30 U.S.C. 226, were submitted on a printed form made available by the Secretary of the Interior through the BLM. On each of the offers submitted to the BLM, the name and address of one

of the offerors, sometimes followed by the words "*et al.*," were typed in the appropriate space at the top of the form. Each offer also contained one legible signature as well as an illegible signature. The illegible signature was followed on each of the forms by the inscription "20 %," indicating that that party—whose identity was not otherwise disclosed on the forms as originally submitted—held a twenty percent interest in the particular offer. The BLM rejected the offers on the ground that, since one of the offerors in each instance could not be ascertained from the face of the offer, the offers failed to comply with the requirements set forth at 43 C.F.R. 3111.1-1. Petitioners appealed to the Department of the Interior's Board of Land Appeals, which affirmed in each case (Pet. App. A-27 to A-28, A-32 to A-33).[1]

Although petitioners subsequently cured the signature defects, the lands in question were withdrawn from oil and gas entry before they filed substitute offers. The lands were originally withdrawn by Public Land Order 4582, 34 F[illegible] Reg. 1025 (January 17, 1969) and have remained withdrawn under the Alaska Native Claims Settlement Act, 85 Stat. 688, 43 U.S.C. (Supp. IV) 1601 *et seq.* (December 18, 1971), and Public Land Order 5179, 37 Fed. Reg. 5579 (March 9, 1972). Since the lands were not available for oil and gas leasing at the time petitioners filed their substitute offers, the substitute offers were rejected by the BLM; the Board of Land Appeals again affirmed (Pet. App. A-28, A-33).

Petitioners then filed the present suits in the United States District Court for the District of Alaska, seeking declaratory and injunctive relief requiring the Secretary to enter into leases with them pursuant to their original offers.

---

[1] *R.C. Bailey*, 7 I.B.L.A. 266; *Helen S. Bailey*, 8 I.B.L.A. 145; *R.C. Bailey and C. Burglin*, 10 I.B.L.A. 281; *Helen S. Bailey and C. Burglin*, 11 I.B.L.A. 51; *Earnest G. Carter*, 12 I.B.L.A. 181. The decisions of the BLM and of the Board of Land Appeals are reprinted at Pet. App. A-1 to A-25.

In support of their claims for relief, petitioners alleged that the rejection of their original lease offers had been unlawful because, *inter alia,* (1) the applicable statute and regulations do not require the identity of all offerors to be disclosed on lease offers; (2) employees in the BLM's regional offices in Fairbanks and Anchorage, where the original offers were filed, either knew or could have ascertained the identity of the offeror whose signature was illegible; (3) acceptance of the original offers for filing and the delay in informing them that their original offers were defective misled them to their detriment; and (4) rejection of the offers exacerbated the shortage of domestically produced oil and gas (Pet. 7-8).

After consolidating the suits, the district court granted defendants' motion for summary judgment (Pet. App. A-26 to A-30). The court of appeals affirmed (Pet. App. A-32 to A-37).

ARGUMENT

1. Petitioners concede (Pet. 6-7) that after the filing of their original offers, the Secretary of the Interior did not enter into leases encompassing the lands for which they had made offers. Petitioners concede as well (Pet. 7) that before they filed substitute offers for the lands in question, those lands had been withdrawn from entry for oil and gas leases. It necessarily follows from these conceded facts that, even if the Secretary erred in rejecting their original offers as defective, petitioners are not entitled to the relief they seek and that the district court properly granted defendants' motion for summary judgment. See Rule 56(c), Fed. R. Civ. P.

Section 1 of the Mineral Leasing Act of 1920, 41 Stat. 437, as amended, 30 U.S.C. 181, removed, among other things, lands containing deposits of oil and gas owned by the United States from entry under the general mining laws of the United States. Under Section 17(a) of the Act, 30 U.S.C. 226(a), lands that are believed to contain oil and gas deposits "may be leased by the Secretary [of the Interior]." In

administering these statutory provisions, the Secretary has broad discretion to determine whether to enter into oil and gas leases with private persons (*e.g., Udall* v. *Tallman,* 380 U.S. 1, 4), including noncompetitive leases such as those sought by petitioners. 30 U.S.C. 226(c); *McTiernan* v. *Franklin,* 508 F.2d 885, 887 (C.A. 10); *McDade* v. *Morton,* 353 F. Supp. 1006, 1010 (D. D.C.), affirmed, 494 F.2d 1156 (C.A. D.C.); *Pease* v. *Udall,* 332 F.2d 62, 63-64 (C.A. 9).

When the Secretary has determined that certain lands are available for leasing and has decided to lease such lands, "the first person making application for the lease * * * shall be entitled to a lease of such lands * * *." 30 U.S.C. 226(c). But the mere filing of an offer for a noncompetitive lease does not restrict the Secretary's discretion to decide whether the lands should be leased. *McTiernan* v. *Franklin, supra,* 508 F.2d at 888; *Schraier* v. *Hickel,* 419 F.2d 663, 666-667 (C.A. D.C.); *Hannifin* v. *Morton,* 444 F.2d 200, 203 (C.A. 10); *Ferry* v. *Udall,* 336 F.2d 706, 713 (C.A. 9), certiorari denied, 381 U.S. 904. If the withdrawal of particular lands precedes the consummation of leases for those lands, the Secretary is obligated to reject any outstanding offers to lease as well as any offers made while the lands are withdrawn. 43 C.F.R. 2091.1 (1973); *Pease* v. *Udall, supra.*

Thus, regardless whether the Secretary erred in concluding that petitioners' original offers to lease were defective, petitioners are not entitled to the relief they seek. Even if petitioners' offers were properly submitted, they were at most entitled to priority consideration. But this would have had practical significance only if the Secretary had decided to lease the lands in question. No such decision was made. The lands were ultimately withdrawn and thereafter the Secretary properly rejected petitioners' substitute offers.

2. While we therefore believe that petitioners' other contentions are not properly presented, we will briefly respond to them.

a. Petitioners did not allege in their complaint that the identities of all offerors were adequately disclosed in the original offers. They alleged instead that the identity of the offerors was either known to employees of the BLM or could have been ascertained with the exercise of reasonable diligence, that leases should have been issued to the offerors whose identities were disclosed in the offers and that the Secretary should be estopped from denying the validity of the original offers because of delay by his subordinates in informing them that the offers were defective.

As the court of appeals held (Pet. App. A-36), the Secretary properly required that the signatures on offers "be plainly legible or accompanied by a clear identification of all persons whose signatures appear thereon."[2] Petitioners' contention that the identity of the offerors was either known to some BLM employees or could have been ascertained fails to recognize that the responsibility for complying with the regulations rests upon the individual offerors.[3]

b. Petitioners' sweeping contentions that the withdrawal of the lands they had offered to lease decreased the availability of domestically produced oil and gas and was the

---

[2]Petitioners rely upon the Secretary's decisions in *Mary Adele Monson*, 71 I.D. 269, and *Mary I. Arata*, 78 I.D. 397. But neither *Monson* nor *Arata* involved a failure to identify an offeror. The principal question presented in both cases concerned instead the validity of the signatures of offerors whose identity had been disclosed in the offers. The Secretary did not here dispute the validity or binding effect of the illegible signatures appearing on the offers submitted by petitioners.

[3]The offer form made available by the Secretary provides a specific space for disclosures of the names and addresses of the offerors, and the applicable regulations and the offer form itself specify that the required information must be typewritten or plainly printed in ink. See 43 C.F.R. 3111.1-1(a). Petitioners' failure to comply with these instructions, not official malfeasance, accounted for the rejection of their original offers.

result of a conspiracy of some sort between the "Oil Cartel" and the government were not substantiated and therefore could not survive defendants' motion for summary judgment. See 6 Moore's *Federal Practice*, par. 56.24 (2d ed. 1948), and cases discussed therein.[4]

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

PETER R. TAFT,
Assistant Attorney General.

JACQUES B. GELIN,
JOHN J. ZIMMERMAN,
Attorneys.

MAY 1976.

---

[4]As the court of appeals observed (Pet. App. A-35 to A-36):

> We do not doubt that Congress' withdrawal of huge amounts of Alaskan land from lease entry perhaps restricted oil production in the United States at a time, as [petitioners] allege, of a "strong and pressing need for and a great shortage of domestically produced oil and gas." However, it is the proper function of Congress and the Executive to set and implement the national energy policy. It is not the function of the judiciary generally to investigate and review the wisdom of this policy. We are a court, not a committee of Congress or department of the Executive. [Petitioners'] complaints, couched in broad terms of public policy, simply do not allege a justiciable cause of action. The gravamen of this aspect of [petitioners'] compiaints is a policy determination for which judicially manageable standards are lacking. *See Baker* v. *Carr*, 369 U.S. 186 (1962).